



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 46] नई दिल्ली, नवम्बर 11—नवम्बर 17, 2012, शनिवार/कार्तिक 20—कार्तिक 26, 1934
No. 46] NEW DELHI, NOVEMBER 11—NOVEMBER 17, 2012, SATURDAY/KARTIKA 20—KARTIKA 26, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(राजस्व विभाग)

(कार्यालय मुख्य आयुक्त केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर, भुवनेश्वर जोन)

भुवनेश्वर, 12 सितम्बर, 2012

सं० 01/2012-कस(एन.टी.)

का.आ. 3387.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग द्वारा जारी यथा संशोधित अधिसूचना सं. 33/94-कस (एन.टी.) दिनांक 1 जुलाई, 1994 तथा सीमा शुल्क अधिनियम, 1962 की धारा 152 के क्लॉज(ए) के अंतर्गत पठित यथा संशोधित अधिसूचना सं. 14/2002-कस्टम (एन.टी.) दिनांक 7 मार्च, 2002 के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, एतद्वारा “ओड़िशा राज्य के डेंकानाल जिला के अधीन ओड़पड़ा ब्लाक के कुरुन्टी तथा खरगप्रसाद गाँव” को सीमा शुल्क अधिनियम, 1962 की धारा 9 के तहत भंडागारण स्टेशन घोषित करता हूँ।

[सी.सं. VIII(40)1/सीसी/कस/भुव/2012/20300-470A]

चित्रांग दुबे, मुख्य आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

(OFFICE OF THE CHIEF COMMISSIONER, CENTRAL EXCISE, CUSTOMS AND SERVICE TAX, BHUBANESWAR ZONE)

Bhubaneswar, the 12th September, 2012

No. 01/2012-CUS(N.T.)

S.O. 3387.—In exercise of the powers conferred by Notification No. 33/94/CUS(N.T.) dated 1st July, 1994, as amended of the Government of India, Ministry of Finance, Department of Revenue, Issued under clause (a) of section 152 of the Customs Act, 1962 read with Notification No. 14/2002-Customs(N.T.) dated 7th March, 2002, as amended, I, hereby declare “Village—Kurunti and Kharagprasad of Block—Otapada under Dhenkanal District in the State of Odisha” to be a Warehousing Station under Section 9 of the Customs Act, 1962.

[C. No. VIII(40)1/CC/CUS/BBSR/2012/20300-470A]

CHITRANG DUBE, Chief Commissioner

भुवनेश्वर, 15 अक्टूबर, 2012

सं. 1/2012-कस (एन.टी.)

का.आ. 3388.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की अधिसूचना सं. 34/2012-सीमा शुल्क (एन.टी.) नई दिल्ली, दिनांक 20 अप्रैल, 2012 के साथ पठित सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 8(ए) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, श्री पीयूष पटनायक, आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर, भुवनेश्वर-1 एतद्वारा एपीजे लॉजिस्टिक्स पार्क प्राईवेट लिमिटेड का कॉम्प्लैक्स, कलिंगनगर, गाँव-खुरुन्टी, थाना-सुकिन्दा, तहसील-सुकिन्दा, जिला-जाजपुर, ओडीशा राज्य के अंदर स्थापित इनलैंड कंटेनर डिपो, कलिंगनगर, (संक्षेप में आईसीडी, कलिंगनगर) के संपूर्ण क्षेत्र को अनुमोदन प्रदान करता हूँ ताकि उस सीमा शुल्क क्षेत्र के स्थान पर निर्धारित माल का लोडिंग तथा आयातित माल का अनलोडिंग किया जा सके, वशतें यह कार्य सीमा शुल्क अधिनियम, 1962 तथा अन्य अनुदेश जो केन्द्रीय सरकार तथा आयुक्त, केन्द्रीय उत्पाद शुल्क, सीमा शुल्क एवं सेवा कर, भुवनेश्वर-1 द्वारा समय-समय पर जारी किए गए हैं, उन संगत प्रावधानों का कड़ाई से पालन किया जाए।

2. सीमा शुल्क अधिनियम, 1962 की धारा 8(बी) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए मैं, एतद्वारा आईसीडी, कलिंगनगर के सीमा शुल्क क्षेत्र को 51372.33 वर्ग मीटर तक सीमित करता हूँ, तथा जो निम्न प्रकार बंधे हैं:-

- (i) उत्तर:- 238.440 मीटर लम्बा तथा 2.4 मीटर ऊंची चारदीवारी, जिस पर 2.5 फीट कंटीले तार के बाड़ा, जिसे "Y" आकार का एंगल की सहायता से लगाया गया है जो मैसर्स नीलाचल इस्पात निगम लिमिटेड (एन.आई.एन.एल.) की फैक्ट्री परिसर की सीमा क्षेत्र से होते हुए उत्तर-पूर्व की ओर जाती है तथा उत्तरी-पूर्व किनारे पर अवस्थित मैसर्स ब्राह्मणी रिवर पेलेट्स लिमिटेड (बी.आर.पी.एल.) फैक्ट्री के परिसर की सीमा तक जाती है।
- (ii) पूर्व:- 228.929 मीटर लम्बा तथा 2.4 मीटर ऊंची चारदीवारी जिस पर 2.5 फीट कंटीले तार का बाड़ा जो कि "Y" आकार के एंगल की सहायता से लगाया गया है जो उत्तरी-पूर्व किनारे पर स्थित मैसर्स बी.आर.पी.एल. फैक्ट्री परिसर के सीमा क्षेत्र तक फैला हुआ है। गाड़ियों के आवाजाही को नियंत्रित करने के लिए दीवारों के बीच में 1.12 मीटर चौड़ा स्वचालित टेलिस्कोप स्टाइडिंग गेट तथा बूम बैरियर की व्यवस्था की गई है। बाउन्डी के बगल में 16 मीटर चौड़ी मुख्य सड़क है जो पूर्व से दक्षिण की ओर जाती है।
- (iii) दक्षिण:- 250.339 मीटर लम्बा तथा 2.5 मीटर ऊंची दीवार जिस पर 2.5 फीट कंटीले तार का बाड़ा "Y" आकार के एंगल की सहायता से लगाया गया है, जो पूर्वी-दक्षिण कोने से दक्षिण-पश्चिम तक फैला हुआ है। गाड़ियों की आवाजाही को नियंत्रित करने के लिए दीवारों के बीच में 1.12 मीटर चौड़ी स्वचालित टेलिस्कोप स्टाइडिंग गेट तथा बूम बैरियर की व्यवस्था की गई है। वहां सुरक्षा गेट कार्यालय अवस्थित है तथा डोमेस्टिक वेयरहाउस तथा यूनिट के डोमेस्टिक यार्ड के बगल से 18 मीटर चौड़ी आन्तरिक सड़क जाती है।

(iv) पश्चिम:- 272.644 मीटर लम्बी तथा 2.4 मीटर ऊंची दीवार जिस पर 2.5 फीट कंटीले तार का बाड़ा "Y" आकार के एंगल की सहायता से लगाया गया है, जो दक्षिण-पश्चिम कोने से पश्चिम-उत्तर कोने तक फैला हुआ है। जहां मैसर्स एन.आई.एन.एल. की फैक्ट्री परिसर अवस्थित है तथा बगल में खाली जमीन है। आईसीडी पर बाद में अधिसूचित किया तरीख से चालू होगा।

[सी. सं. VIII(43)3/कस./भुव-I/2009/23466-480ए]

पीयूष पटनायक, आयुक्त

Bhubaneswar, the 15th October, 2012

No. 1/2012-Cus (NT)

S.O. 3388.—In exercise of powers conferred under Section 8(a) of the Customs Act, 1962(52 of 1962) read with the Government of India, Ministry of Finance, Department of Revenue, New Delhi's Notification No. 34/2012-Customs(N.T.) New Delhi, dated the 20th April, 2012, I, Sri Piyusha Patnaik, Commissioner of Central Excise, Customs and S. Tax, Bhubaneswar-I, hereby approve the Inland Container Depot, Kalinganagar, (In short ICD Kalinganagar) situated inside the complex of M/s. Appejay Logistics Park Pvt. Ltd., Kalinganagar, at Village Khurunti, P.S.-Sukinda, Tahsil-Sukinda, Dist-Jajpur, State of Odisha, as Customs Area for the purpose of loading of export goods and unloading of imported goods, subject to strict observance of the relevant provisions of the Customs Act 1962, the Rules & Regulations made thereunder and other instructions issued by the Central Government and the Commissioner of Central Excise, Customs and S. Tax, Bhubaneswar-I, from time to time.

2. In exercise of the powers conferred under Section 8(b) of the Customs Act, 1962. I hereby further specify the limits of the Customs Area for ICD Kalinganagar, comprising 51372.33 sq. mtrs., and boundary as under: ---

- (i) North:— By a 238.440 mtrs long and 2.4 mtrs high boundary wall with 2.5 feet barbed wire fencing supported by 'Y' designed angle on the top; running from North to East along the border area of the factory premises of M/s Nilachal Ispat Nigam Ltd. (NINL) up to the border area of the factory premises of M/s. Brahmani River Pellets Ltd. (BRPL) which is situated at the North-East corner.
- (ii) East:— By a 228.929 mtrs long and 2.4 mtrs high boundary wall with 2.5 feet barbed wire fencing supported by 'Y' designed angle on the top, running from the border area of the factory premises of M/s. BRPL situated at North-East corner to South side. The running boundary wall is having a 1.12 mtrs wide automatic telescopic sliding gate & boom barrier arrangement for control on vehicular movement and is along the side of 16 mtrs wide main approach road running from East to South.

(iii) **South:**— By a 250.339 mtrs long and 2.4 mtrs high boundary wall with 2.5 feet barbed wire fencing supported 'Y' designed angle on the top running from East-South corner to South-West. The running boundary wall is having a 1.12 mtrs wide automatic telescopic sliding gate & boom barrier arrangement for control on vehicular movement with security gate office and is along the side of 18 mtrs wide internal road running by the side of the domestic warehouse & domestic yard of the unit.

(iv) **West:**— By a 272.644 mtrs long and 2.4 mtrs high boundary wall with 2.5 feet barbed wire fencing supported by 'Y' designed angle on the top, running from south-west corner to west-north where the factory premises of M/s. NINL is situated and the adjacent area is a vacant Government land.

The ICD would be operational from a date to be notified later on.

[C.No. VIII(43)3/CUS/BBSR-I/2009/23466-480-A]

PIYUSHA PATNAIK, Commissioner

भुवनेश्वर, 19 अक्टूबर, 2012

सं. 02/2012-कस (एन.टी.)

का.आ. 3389.—जबकि मैसर्स पारादीप पोर्ट ट्रस्ट ने आयुक्त, सीमा शुल्क और केंद्रीय उत्पाद शुल्क, भुवनेश्वर-I आयुक्तालय से सीमा शुल्क अधिनियम, 1962 (ख) की धारा 8 के तहत कुछ विस्तारित क्षेत्रों की "सीमा शुल्क क्षेत्र" के रूप में घोषणा करने के लिए संपर्क किया है, कारण उनके द्वारा उस क्षेत्र में कुछ रेलवे साइडिंग विकसित की गई थी।

जबकि, कभी भी बंदरगाह के संचालन के बाद से, जब भी मैसर्स पारादीप पोर्ट ट्रस्ट द्वारा अनुरोध किया गया जब सीमा शुल्क आयुक्त द्वारा सीमा शुल्क अधिनियम, 1962 के खंड 8(ख) के तहत पोर्ट में विभिन्न क्षेत्रों के संबंध में घोषणाओं को अलग किया गया था और इसलिए उन्हें वे सभी पूर्व अधिसूचनाओं को जमा करने के लिए अनुरोध किया गया है जो उक्त अधिनियम की धारा 8 (ख) के तहत जारी किए गए हैं।

जबकि कुछ को छोड़कर, सीमा शुल्क अधिनियम की धारा 8 (ख) के तहत जारी किए गए सभी सूचनाओं का पारादीप कस्टम हाउस, केंद्रीय उत्पाद शुल्क और सीमा शुल्क, भुवनेश्वर आयुक्तालय और मैसर्स पारादीप पोर्ट ट्रस्ट में पता नहीं लग रहा है। मैसर्स पारादीप पोर्ट ट्रस्ट के अधिकारियों ने समय-समय पर अपने विभिन्न पत्रों में यह अनुरोध किया है कि उनके द्वारा पूरे क्षेत्र को जो चारदीवारी के साथ घेर लिया गया है उसे "सीमा शुल्क क्षेत्र" घोषित किया जाए जिसमें पूर्व घोषित "सीमा शुल्क क्षेत्र" तथा कुछ अतिरिक्त क्षेत्र भी शामिल किए जाएं। उपरोक्त परिस्थितियों को देखते हुए यह उचित माना जाता है, कि सीमा शुल्क अधिनियम 1962 की धारा 8 (ख) के तहत नए सिरे से सत्यापन के बाद उस क्षेत्र की घोषणा की जा सकती है।

जबकि यातायात प्रबंधक ने अंतिम सत्यापन के बाद अपने पत्र संख्या ID/TMGENT-12(X) 3527 दिनांक 08-08-2012 द्वारा एक नक्शे के साथ सूचित किया कि उक्त अधिनियम की धारा 8 (ख) के तहत इस क्षेत्र को घोषित किया जा सकता है।

अब इसलिए सीमा शुल्क अधिनियम, 1962 की धारा 8(ख) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, पीयूष पटनायक, आयुक्त, केंद्रीय उत्पाद शुल्क, सीमा शुल्क और सेवा कर, भुवनेश्वर-I, आयुक्तालय, पहले जारी किए गए सभी अधिसूचनाओं को अधिक्रमण करते हुए सीमा शुल्क अधिनियम, 1962 की धारा 8(ख) के तहत पारादीप के बंदरगाह को "सीमा शुल्क क्षेत्र" घोषित करता हूँ, इसके द्वारा ओडिशा राज्य के जगतसिंहपुर जिले में स्थित पारादीप के प्रमुख बंदरगाह के निम्न परिसर को "सीमा शुल्क क्षेत्र" के रूप में निर्दिष्ट करता हूँ। जैसा नीचे निर्दिष्ट है कि "सीमा शुल्क क्षेत्र" तीनों ओर से दीवार से घिरा हुआ है और एक तरफ बंगाल की खाड़ी से घिरा हुआ है, जिसमें बंदरगाह भूमि 1822 एकड़ क्षेत्र+पानी फैल क्षेत्र 392 एकड़ शामिल हैं। इस प्रकार कुल जमीन का क्षेत्रफल 2214 एकड़ है जिसमें सभी 14 बर्थ, NQ I और II, RO - RO जेट्टी और लैगून शामिल हैं।

पारादीप बंदरगाह के सीमा शुल्क क्षेत्र की सीमाएं इस प्रकार हैं:

उत्तर की ओर: पोर्ट परिसर की एक सुरक्षा दीवार अठरबांकी क्षेत्र से सेक्टर 21 तक चल रही सड़क के साथ लगी हुई है, जो सुरक्षा गेट सं० 02 से सुरक्षा गेट सं० 01 तक है। सड़क के बीच में एक पुल है जिसे धनघलिआ पुल के नाम से जाना जाता है तथा उस सड़क के बगल में इंदिरा पार्क स्थित है।

दक्षिण की ओर: बंगाल की खाड़ी के कुछ हिस्से और अन्य भाग पोर्ट की सुरक्षा परिसर की चारदीवारी है जो सुरक्षा गेट No. 04 से गेट नं० 05 तक शहरी बस्ती क्षेत्र की सीमा से होते हुए बंगाल की खाड़ी तक फैला हुआ है।

पूर्व की ओर: बंगाल की खाड़ी।

पश्चिम की ओर: पोर्ट की एक सुरक्षा परिसर चारदीवारी सुरक्षा गेट सं० 04 से गेट सं० 03 और फिर सुरक्षा गेट सं० 02 के पास बालीप्लॉट क्षेत्र तक है। बगल में अठरबांकी क्षेत्र है।

[सी.सं. VIII(43)1/कस/भुव-I/2012/24249-58-ए]

पीयूष पटनायक, आयुक्त

Bhubaneswar, the 19th October, 2012

No. 02/2012-CUS(NT)

S.O. 3389.—Whereas M/s. Paradeep Port Trust has approached Commissioner of Customs & Central Excise, Bhubaneswar-I, Commissionerate to declare certain extended areas under Section 8(b) of Customs Act, 1962 as "Customs area" as they had developed certain Railway sidings in that area.

Whereas, ever since the operation of the port, declarations under Section 8(b) of Customs Act, 1962 by Commissioner of Customs in respect of different areas in the Port was done separately as and when requested by M/s. Paradeep Port Trust and therefore they were requested to submit all earlier notifications issued under Section 8(b) of the said Act.

Whereas barring a few, all the notifications issued under Section 8(b) of the said Act could not be traced in Paradeep Custom House, Commissionerate of Central Excise & Customs, Bhubaneswar and also in M/s. Paradeep Port Trust. Authorities of, M/s. Paradeep Port Trust time and again also requested, in their various letters to declare the entire area to which they have encircled with boundary wall, as "Customs area", which includes the existing declared "Customs area" and some additional area. Where as in the light of the foregoing it is considered appropriate, in the circumstances to declare the area under Section 8(b) of the Customs Act, 1962 afresh after verification.

Whereas the Traffic Manager vide his letter No. ID/TM/GENL-12(X) 3527 dated 08-08-2012 after final verification intimated the area to be declared under Section 8(b) of the said Act alongwith a map.

Now therefore in exercise of the powers conferred under Section 8(b) of the Customs Act, 1962, I, Piyusha Patnaik, Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I Commissionerate, in supersession of all the earlier notifications issued declaring the "Customs area" under Section 8(b) of Customs Act, 1962 in the port of Paradeep, hereby specify the following premises of the major Port of Paradeep situated in district of Jagatsinghpur of Odisha state as "CUSTOMS AREA". The "Customs area" is encircled by boundaries in three sides and Bay of Bengal in one side as specified below comprising the harbor land area measuring 1822 acres + Water Spread Area 392 Acres. Total area thus is 2214 acres which includes all 14 berths, NQ I & II, RO-RO Jetty and the lagoon.

The boundaries of the Customs area of Paradeep Port are as follows :

North Side : A security compound wall of the Port along the running road from Atharabanki area to Sector 21, from security Gate No. 02 to security Gate No. 01. On the middle of the road situated a bridge known as Ghanaghalla Bridge and adjacent to said road Indira Park is situated.

South Side : Some portion of Bay of Bengal and other portion is the security compound boundary wall of the Port from security Gate No. 04 to security Gate No. 05 along the border of township area, extended up to Bay of Bengal.

East Side : Bay of Bengal.

West Side : A security compound boundary wall of the Port from security Gate No. 04 to Gate No. 03 and then to security Gate No. 02 near Baliplot area. The adjacent area is Atharabanki area.

[C.No. VIII(43)1/CUS/BBSR-I/2012/24249-58-A]

PIYUSHA PATNAIK, Commissioner

(कार्यालय आयुक्त, केन्द्रीय उत्पाद शुल्क, जयपुर-प्रथम)

जयपुर, 2 नवम्बर, 2012

सं. 01/2012-सी.शु. (एन.टी.)

सीमा-शुल्क

का.आ. 3390.—सीमा-शुल्क अधिनियम, 1962 की धारा 152 के खंड (ए) के अंतर्गत भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली द्वारा जारी अधिसूचना सं. 33/94 सीमा-शुल्क (एन.टी.) दिनांक 01-07-1994 तथा संशोधित अधिसूचना सं. 122/2004 में प्रदत्त शक्तियों का उपयोग करते हुए मैं ओ. पी. दाधीच, आयुक्त, केन्द्रीय उत्पाद शुल्क, जयपुर-I सीमा-शुल्क अधिनियम, 1962 की धारा 9 के अन्तर्गत एतद्वारा इस अधिसूचना के जारी होने की तिथि से 100% ई.ओ.यू. के शुरू करने के लिए खसरा सं. 61, रघुवीरपुरा, बूंदी-चित्तौड़रोड, पोस्ट-बूंदी, राजस्थान राज्य को भण्डार गृह स्टेशन होने की घोषणा करता हूं।

[सी. सं. V(16) कस/01/2012]

ओपी दाधीच, आयुक्त

(OFFICE OF THE COMMISSIONER CENTRAL
EXCISE, JAIPUR-I)

Jaipur, the 2nd November, 2012

No. 01/2012-CUS (N.T.)

CUSTOMS

S.O. 3390.—In exercise of the powers conferred by Notification No. 33/94-Customs (NT) dated 01-07-1994 as amended by Notification No. 122/2004-Cus (NT) dated 25-10-2004 by the Government of India, Ministry of Finance, Department of Revenue, New Delhi, issued under Clause (a) of Section 152 of Customs Act, 1962, I, O.P. Dadhich, Commissioner of Central Excise, Jaipur-I hereby declare Khasara No. 61, Raghubirpura, Bundi-Chittore Road, P.O. Bundi in the state of Rajasthan to be warehousing station with effect from date of issue of this Notification under Section 9 of the Customs Act, 1962 for the purpose of setting up of 100% E.O.U.

[C.No. V(16) Cus/01/2012]

O.P. DADHICH, Commissioner

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 9 नवम्बर, 2012

का.आ. 3391.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, कार्पोरेशन बैंक के कार्यपालक निदेशक श्री अश्विनी कुमार (जन्म तिथि: 28-02-1958) को, 01-01-2013 को या उसके बाद उनके द्वारा पद का कार्यभार ग्रहण करने की तारीख से पांच वर्षों की अवधि के लिए

अथवा उनके द्वारा अधिवर्षिता की आयु प्राप्त कर लेने तक अथवा अगले आदेशों तक, इनमें से जो भी सबसे पहले हो, देना बैंक के अध-यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[फा. सं. 4/4/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

(Department of Financial Services)

New Delhi, the 9th November, 2012

S.O. 3391.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Sh. Ashwini Kumar (DoB : 28.02.1958), Executive Director, Corporation Bank as Chairman and Managing Director, Dena Bank for a period of five years from the date of taking over charge on or after 01.01.2013 or till the date of his attaining the age of superannuation or until further orders, whichever is earliest.

[F.No. 4/4/2011-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 16 नवम्बर, 2012

का.आ. 3392.—भारतीय जीवन बीमा निगम श्रेणी 3 और श्रेणी 4 कर्मचारी (सेवा के निबंधन और शर्तों का संशोधन) नियमावली, 1985 के नियम 13 के उप नियम (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, यह निर्धारित करती है कि श्रेणी 3 और श्रेणी 4 के प्रत्येक कर्मचारी को 01 अप्रैल, 2011 को आरम्भ होने वाली और 31 मार्च, 2012 को समाप्त होने वाली अवधि के लिए बोनस के बदले में भुगतान, उक्त उप-नियम में अन्य उपबंधों के अध्वधीन, उनके वेतन के 15 प्रतिशत की दर पर किया जाएगा।

[फा.सं. 2(15)96/बीमा-III]

एस. के. मोहन्ती, अवर सचिव

New Delhi, the 16th November, 2012

S.O. 3392.—In exercise of the powers conferred by sub-rule (2) of rule 13 of the Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985, the Central Government hereby determine that, subject to the other provisions of the said sub-rule, the payment in lieu of bonus for the period commencing on 1st day of April, 2011 and ending with 31st March, 2012 to every Class III and Class IV employee shall be at the rate of 15 per cent of his/her salary.

[F.No. 2(15)96/Ins.-III]

S. K. MOHANTY, Under Secy.

4214 GI/12-2

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 8 अगस्त, 2012

का.आ. 3393.—केन्द्र सरकार, भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद् से परामर्श करने के बाद उक्त अधिनियम की प्रथम अनुसूची में अर्हता की नामावली में परिवर्तन के कारण निम्नलिखित और संशोधन करती है अर्थातः—

उक्त अनुसूची में—

(क) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत “मैसूर विश्वविद्यालय” के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्तः स्थापित किया जाएगा, नामतः—

2	3
“डॉक्टर ऑफ मेडिसिन (रेडियो डायग्नोसिस)”	एमडी (रेडियो डायग्नोसिस) (यह वर्ष 1985 से 1999 के बीच मैसूर मेडिकल कालेज एंड रिसर्च इंस्टीट्यूट, मैसूर में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में मैसूर विश्वविद्यालय द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्सा अर्हता होगी)।
“डिप्लोमा इन मेडिकल रेडियो डायग्नोसिस”	डीएमआरडी (यह वर्ष 1985 से 1999 के बीच मैसूर मेडिकल कालेज एंड रिसर्च इंस्टीट्यूट, मैसूर में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में मैसूर विश्वविद्यालय द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्सा अर्हता होगी)।

(ख) मान्यता पास चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत “राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर” के प्रति पंजीकरण के लिए संक्षेपण [इसके बाद कालम (3) के रूप में संदर्भित], शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्तः स्थापित किया जाएगा, नामतः—

“डॉक्टर ऑफ मेडिसिन (रेडियो डायग्नोसिस)”	एमडी (रेडियो डायग्नोसिस) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह मैसूर मेडिकल कालेज एंड रिसर्च इंस्टीट्यूट, मैसूर में प्रशिक्षित किए जा रहे विद्यार्थियों के बारे में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर द्वारा वर्ष 1999 में अथवा उसके बाद प्रदान की गई हो)।
“डिप्लोमा इन मेडिसिन रेडियो डायग्नोसिस”	डीएमआरडी (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब यह मैसूर मेडिकल कालेज एंड रिसर्च इंस्टीट्यूट, मैसूर में प्रशिक्षित किए जा रहे विद्यार्थियों के बारे में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर द्वारा वर्ष 1999 में अथवा उसके बाद प्रदान की गई हो)।

सभी के लिए टिप्पणी:

1. स्नातकोत्तर पाठ्यक्रम के लिए स्वीकृत मान्यता 5 वर्ष की अधिकतम अवधि के लिए होगी जिसके बाद इसकी पुनरीक्षा की जाएगी।
2. उप-धारा (4) में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रमों में निरपवाद रूप से दाखिला बन्द हो जाएगा।

[सं. यू. 12012/24/2012-एमई (पी.-II)]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 8th August, 2012

S.O. 3393.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualification namely:—

In the said Schedule—

(a) against “Mysore University” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
“Doctor of Medicine (Radio Diagnosis)”	MD (Radio Diagnosis) (This shall be a recognised medical qualification when granted by Mysore University in respect of students being trained at Mysore Medical College & Research Institute, Mysore between 1985 to 1999.
“Diploma in Medical Radio Diagnosis”	DMRD (This shall be a recognised medical qualification when granted by Mysore University in respect of the students being trained at Mysore Medical College & Research Institute, Mysore between 1985 to 1999.

(b) against “Rajiv Gandhi University of Health Sciences, Bangalore” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely:—

“Doctor of Medicine (Radio Diagnosis)”	MD (Radio Diagnosis) (This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of students being trained at Mysore Medical College & Research Institute, Mysore on or after 1999.
--	---

“Diploma in Medical Radio Diagnosis”

DMRD

(This shall be a recognised medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore in respect of the students, being trained at Mysore Medical College & Research Institute, Mysore on or after 1999.

Note to all: 1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause (4) shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U. 12012/24/2012-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 23 अगस्त, 2012

का.आ. 3394.—केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद, एतद्वारा अर्हता की नामावली के बदलाव के कारण उक्त अधिनियम, की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है अर्थात्:—

उक्त अनुसूची में—

(क) “गोरखपुर विश्वविद्यालय, गोरखपुर” के समक्ष शीर्षक ‘मान्यता प्राप्त चिकित्सा अर्हता’ [इसके आगे कालम (2) के रूप में संदर्भित] के अन्तर्गत शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके आगे कालम (3) के रूप में संदर्भित] के अन्तर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, अर्थात्:—

(2)	(3)
“मास्टर ऑफ सर्जरी (ओर्थोपैडिक्स)”	एमएस (ओर्थो) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह बीआरडी मेडिकल कालेज, गोरखपुर, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में गोरखपुर विश्वविद्यालय, गोरखपुर द्वारा वर्ष 1983 से अगस्त, 1997 के बीच प्रदान की गई हो)
“डिप्लोमा इन ओर्थोपैडिक्स”	डी. ओर्थो (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह बीआरडी मेडिकल कालेज, गोरखपुर, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में गोरखपुर विश्वविद्यालय, गोरखपुर द्वारा वर्ष 1982 से अगस्त, 1997 के बीच प्रदान की गई हो)।

(ख) “डीडीयू गोरखपुर विश्वविद्यालय, गोरखपुर” के समक्ष शीर्षक ‘मान्यता प्राप्त चिकित्सा अर्हता’ [इसके आगे कालम (2) के रूप में संदर्भित] के अन्तर्गत, शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके आगे कालम (3) के रूप में संदर्भित] के अन्तर्गत, अंतिम प्रविष्टि एवं उससे

संबंधित प्रविष्टि के बाद निम्नलिखित को अंतःस्थापित किया जाएगा, अर्थात्:-

2	3
"मास्टर ऑफ सर्जरी (ओर्थोपैडिक्स)"	एमएस (ओर्थो) (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह बीआरडी मेडिकल कालेज, गोरखपुर, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में डीडीयू गोरखपुर विश्वविद्यालय, गोरखपुर द्वारा सितम्बर, 1997 में अथवा उसके पश्चात् प्रदान की गई हो)
"डिप्लोमा इन ओर्थोपैडिक्स"	डी० ओर्थो (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह बीआरडी मेडिकल कालेज, गोरखपुर, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में डीडीयू गोरखपुर विश्वविद्यालय, गोरखपुर द्वारा सितम्बर, 1997 में अथवा उसके पश्चात् प्रदान की गई हो)

सभी नोट करें कि: 1. स्नातकोत्तर पाठ्यक्रम को प्रदान की गई मान्यता अधिकतम 5 वर्ष तक की अवधि के लिए होगी जिसके पश्चात् इसे नवीकृत करवाना होगा।

2. उप-खण्ड 4 में यथोपेक्षित मान्यता को समय से नवीकृत न करवाने के परिणामस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रम में दाखिले निरपवाद रूप से बंद हो जाएंगे।

[सं. यू. 12012/16/2012-एमई(पी-II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 23rd August, 2012

S.O. 3394.—in exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change in name of affiliating University namely:—

(a) against "Gorakhpur University, Gorakhpur" under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration'[hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
"Master of Surgery (Orthopaedics)"	MS (Ortho.) This shall be a recognised medical qualification when granted by Gorakhpur University, Gorakhpur in respect of students being trained at B.R.D. Medical College, Gorakhpur, Uttar Pradesh between 1983 to August, 1997.
"Diploma in Orthopaedics"	D. Ortho. This shall be a recognised medical qualification when granted by

Gorakhpur University, Gorakhpur in respect of students being trained at B.R.D. Medical College, Gorakhpur, Uttar Pradesh between 1982 to August, 1997.

(b) against "DDU Gorakhpur University, Gorakhpur" under the heading 'Recognised Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted namely:—

"Master of Surgery (Orthopaedics)"	MS (Ortho.) This shall be a recognised medical qualification when granted by Gorakhpur University, Gorakhpur in respect of students being trained at B.R.D. Medical College, Gorakhpur, Uttar Pradesh on or after September, 1997.
"Diploma in Orthopaedics"	D. Ortho. This shall be a recognised medical qualification when granted by Gorakhpur University, Gorakhpur in respect of students being trained at B.R.D. Medical College, Gorakhpur, Uttar Pradesh on or after September, 1997.

Note to all: 1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause-4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U. 12012/16/2012-ME(P-II)]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 5 अक्टूबर, 2012

का.आ. 3395.—केन्द्र सरकार, भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद से परामर्श करने के बाद उक्त अधिनियम की प्रथम अनुसूची में अर्हता की नामावली में परिवर्तन के कारण निम्नलिखित और संशोधन करती है अर्थात्:

उक्त अनुसूची में-

(क) मान्यता प्राप्त चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में संदर्भित] शीर्षक के अंतर्गत "राजीव गांधी स्वास्थ्य विज्ञान

विश्वविद्यालय, बंगलौर, कर्नाटक" के प्रति पंजीकरण के लिए संक्षेपण (इसके बाद कालम (3) के रूप में संदर्भित), शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित अन्तः स्थापित किया जाएगा, नामतः—

2	3
---	---

“बैचलर ऑफ मेडिसिन एवं एमबीबीएस बैचलर आफ सर्जरी” (यह एक मान्यता प्राप्त चिकित्सा अर्हता होगी यदि यह शिमोगा स्वास्थ्य विज्ञान संस्थान, बंगलौर, कर्नाटक में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर, कर्नाटक द्वारा प्रति वर्ष 100 विद्यार्थियों के वार्षिक दाखिले के साथ जनवरी, 2012 में अथवा उसके बाद प्रदान की गई हो)।

[सं.यू. 12012/185/2005-एम.ई.(पी.-II)]

अनिता त्रिपाठी, अवर सचिव

New Delhi, the 5th October, 2012

S.O. 3395.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956(102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said First Schedule against "Rajiv Gandhi University of Health sciences, Bangalore, Karnataka" under the heading "Recognized Medical Qualification" [in column (2)] and under the heading 'Abbreviation for Registration' [in column (3)], the following shall be inserted, namely:—

(2)	(3)
Bachelore of Medicine and Bachelor of Surgery	M.B.B.S. (This shall be a recognized medical qualification when granted by Rajiv Gandhi University of Health Sciences, Bangalore, Karnataka, in respect of students being trained at Shimoga Institute of Medical Sciences, Bangalore, Karnataka on or after January, 2012 with annual intake of 100 students per year.

[No. U. 12012/185/2005-ME(P-II)]
ANITA TRIPATHI, Under Secy.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 12 नवम्बर, 2012

का.आ. 3396. केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स रिलाइबल एनालाइटिकल लेबोरेट्रीज प्रा.लि. जो कि मुरगावो बीच टावर, भूमि तल दुकान सं. 7 बुसी बी स्कूल के सामने, डेस्टेरो, वास्को दो गामा, गोवा-403 802 में स्थित है, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 की अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क, ग्रुप-1 अर्थात् लौह अयस्क को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन रहते हुए गोवा में निरीक्षण करने के लिए एक अधिकरण के रूप में मान्यता देती है, अर्थात्:—

- मैसर्स रिलाइबल एनालाइटिकल लेबोरेट्रीज प्रा.लि. मुरगावो बीच टावर, भूमि तल दुकान सं. 7, बुसी बी स्कूल के सामने, डेस्टेरो, वास्को दो गामा, गोवा- 403 802 खनिज तथा अयस्क ग्रुप-1 का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन उनके द्वारा अपनाई गई निरीक्षण की पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी,
- मैसर्स रिलाइबल एनालाइटिकल लेबोरेट्रीज प्रा.लि. मुरगावो बीच टावर, भूमि तल दुकान सं. 7, बुसी बी स्कूल के सामने, डेस्टेरो, वास्को दो गामा, गोवा-403 802 इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) द्वारा समय-समय पर लिखित में दिए गए ऐसे निर्देशों से आबद्ध होंगे।

[सं. 4/9/2012-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 12th November, 2012

S.O. 3396.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. Reliable Analytical Laboratories Pvt. Ltd. located at Murgao Beach Tower, Ground Floor, Shop No. 7, Opp. Busy Bee School, Desterro, Vasco Da Gama, Goa-403 802, as an agency for a period of three years from the date of publication of this notification, for the

inspection of Minerals and Ores Group-I, namely, Iron Ore, specified in the Schedule annexed to the Ministry of Commerce notification number S.O. 3975, dated the 20th December 1965, period to export of said minerals and ores at Goa, subject to the following conditions, namely:—

- (i) M/s. Reliable Analytical Laboratories Pvt. Ltd. Murgao Beach Tower, Ground Floor, Shop No. 7, Opp. Busy Bee School, Desterro, Vasco Da Gama, Goa-403 802, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965;
- (ii) M/s. Reliable Analytical Laboratories Pvt. Ltd. Murgao Beach Tower, Ground Floor, Shop No. 7, Opp. Busy Bee School, Desterro, Vasco Da Gama, Goa-403 802, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), may give in writing from time to time.

[No. 4/9/2012-Export Inspection]

A.K. TRIPATHY, Jt. Secy.

नई दिल्ली, 12 नवम्बर, 2012

का.आ. 3397.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) साथ पठित, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स के. सी. शर्मा एंड कम्पनी, दूसरा तल, नं. 319, थम्बू चेट्टी स्टे. चेन्नई-600 001 को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए, भारत सरकार के वाणिज्य मंत्रालय, की अधिसूचना सं. का.आ. 3975 तारीख 20 दिसम्बर, 1965 और का.आ. 3978 तारीख 20 दिसम्बर, 1965 के साथ उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क समूह-1 अर्थात् लौह अयस्क और समूह-2 अर्थात् बैराइटिस का, निम्नलिखित शर्तों के अधीन रहते हुए उक्त खनिजों और अयस्कों के निर्यात से पूर्व चेन्नई में निरीक्षण करने के लिए, अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात्:—

- (i) मैसर्स के. सी. शर्मा एंड कम्पनी, दूसरा तल, नं. 319, थम्बू चेट्टी स्टे. चेन्नई-600 001 खनिजों और अयस्कों, समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 और खनिजों और अयस्कों, समूह-II का निर्यात (निरीक्षण) नियम, 1965 के अधीन निरीक्षण करने के लिए उनके द्वारा अनुसरण की गई निरीक्षण की पद्धति का परीक्षण करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद् द्वारा नाम निर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगा; और

- (ii) मैसर्स के. सी. शर्मा एंड कम्पनी, दूसरा तल, नं. 319, थम्बू चेट्टी स्टे. चेन्नई-600 001 इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निदेशों द्वारा आबद्ध होगा, जो निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित में दिए जाएं।

[सं. 4/3/2012-निर्यात निरीक्षण]

ए. के. त्रिपाठी, संयुक्त सचिव

New Delhi, the 12th November, 2012

S.O. 3397.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. K.C. Sharma & Co. located at 2nd floor, No. 319, Thambu Chetty St. Chennai-600 001, as an agency for a period of three years from the date of publication of this notification, for the inspection of Minerals and Ores Group-I, namely, Iron ore, and Group-II, namely, Barytes, specified in the Schedule annexed to the notification of the Government of India in the Ministry of Commerce number S.O. 3975, dated the 20th December 1965, and S.O. 3978, dated the 20th December, 1965 respectively, prior to export of the said Minerals and Ores at Chennai, subject to the following conditions, namely:—

- (i) that M/s. K.C. Sharma & Co. located at 2nd floor, No. 319, Thambu Chetty St. Chennai-600 001, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in carrying out the inspection under rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965 and the Export of Minerals and Ores, Group-II (Inspection) Rules, 1965 and;
- (ii) that M/s. K.C. Sharma & Co. located at 2nd floor, No. 319, Thambu Chetty St. Chennai-600 001, in the performance of their function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[No. 4/3/2012-Export Inspection]

A.K. TRIPATHY, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 6 नवम्बर, 2012

का.आ. 3398.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया/किये गये हैं।

4214 GI/12-3

अनुसूची

क्रम संशोधित भारतीय मानक (कोई) संख्या की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	स्थापित तिथि
1 आईएस 2333:1992 चीनी मिट्टी उद्योग के लिए पेरिस प्लास्टर-विशिष्ट (दूसरा पुनरीक्षण)	संशोधन संख्या नं 1, अक्टूबर 2011	31 अक्टूबर 2011
2 आईएस 2338:1964 सामान्य प्रयोजनों के लिए स्टेनवेयर के धारकों की विशिष्टि	संशोधन संख्या नं 3, अक्टूबर 2011	31 अक्टूबर 2011
3 आईएस 2339:1964 औद्योगिक स्टेनवेयर समान की विशिष्टि	संशोधन संख्या नं 4, अक्टूबर 2011	31 अक्टूबर 2011
4 आईएस 12621:1988 बेंटोनाइट सिरामिक उद्योग के लिए-विशिष्ट	संशोधन संख्या नं 2, अक्टूबर 2011	31 अक्टूबर 2011

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110 002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 09/आईएस 2838, 2839]

एस.एन. चटर्जी, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन विभाग)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 6th November, 2012

S.O. 3398.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rule, 1987, the

Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
1.	IS 2333:1992 Plaster for paris for ceramic industry-Specification (second revision)	Amendment No. 1, October 2011	31 October 2011
2.	IS 2838:1964 Specification for Stoneware containers for general purposes	Amendment No. 3, October 2011	31 October 2011
3.	IS 2839:1964 Specification for industrial stoneware	Amendment No. 4, October 2011	31 October 2011
4.	IS 12621:1988 Bentonite for ceramic industry-specification	Amendment No. 2, October 2011	31 October 2011

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manik Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram. On line purchase of Indian Standard can be made at : <http://www.standardsbis.in>.

[Ref. CHD 09/IS 2838, 2839]

S.N. CHATTERJEE, Scientist 'F' & Head (CHD)

नई दिल्ली, 6 नवम्बर, 2012

का.आ. 3399.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनुभाग	वर्ष
1	3839983	25-9-2012	मेसर्स बागाडिया हेल्थकेयर गट सं. 14 देवभूमि जिला जालना महाराष्ट्र 431203	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
2	3874480	27-9-2012	मेसर्स डेक्सेल प्लास्ट प्रा.लि. गट सं. 483/2 एन.एच. सं. 50 मेडनकरवाड़ी, चाकण तालुका खेड जिला पुणे महाराष्ट्र 410501	पेय जल आपूर्ति के लिए अप्लास्टिक पीवीसी पाइप्स	4985			2000

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनुभाग	वर्ष
3	3879490	11-10-2012	मेसर्स श्री समर्थ फूड्स एंड बेवरेजेज स.नं. 15/3 मंगदेवाडी-गुजरवाडी रोड तालुका हवेली जिला पुणे महाराष्ट्र 411046	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543			2004
4	3867685	18-10-2012	मेसर्स ब्रिजस्टोन इंडिया प्रा.लि. प्लॉट नं. ए-43 फेज 2 चाकन इंडस्ट्रियल एरिया तालुका खेड जिला पुणे, महाराष्ट्र	स्वचल वाहन-सवारी कारों के लिए वातिल टायर-आड़ी और रेडियल प्लाई	15633			2005
5	3867786	12-10-2012	मेसर्स ब्रिजस्टोन इंडिया प्रा.लि. प्लॉट नं. ए-43 फेज 2 चाकन इंडस्ट्रियल एरिया तालुका खेड जिला पुणे महाराष्ट्र	स्वचल वाहन-व्यावसायिक वाहनों के लिए वातिल टायर-आड़ी और रेडियल प्लाई	15636			2005

[सं. सी एम डी/13:11]

बी. एम. हनीफ, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 6th November, 2012

S.O. 3399.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule.

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
1	3839983	25-9-2012	M/s Bagdia Healthcare Gut No. 14 Devmurti District Jalna Maharashtra 431203	Packaged drinking water (Other than packaged natural mineral water)	14543		2004	
2	3874480	27-9-2012	M/s Dexcel Plast Pvt. Ltd. Gat No. 483/2 N.H. No. 50 Mednankarwadi, Chakan Taluka Khed District Pune Maharashtra 410501	Unplasticized PVC pipes for potable water supplies	4985		2000	
3	3879490	11-10-2012	M/s Shree Samarth Foods & Beverages Sr. No. 15/3 Mangadewadi-Gujarwadi Road Taluka Haveli District Pune Maharashtra 411046	Packaged drinking water (Other than packaged natural mineral water)	14543		2004	

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part	Section	Year
4	3867685	18-10-2012	M/s Bridgestone India Private Limited Plot No. A-43 Phase 2 Chakan Industrial Area Taluka Khed District Pune Maharashtra	Automotive vehicles- pneumatic tyres for passenger car vehicles- Diagonal and radial ply	15633			2005
5	3867786	12-10-2012	M/s Bridgestone India Private Limited Plot No. A-43 Phase 2 Chakan Industrial Area Taluka Khed District Pune Maharashtra	Automotive vehicles- pneumatic tyres for commercial vehicles- diagonal and radial ply	15636			2005

[No. CMD/13:11]

B.M. HANEEF, Scientist 'F' and Head

कोयला मंत्रालय**आदेश**

नई दिल्ली, 15 नवम्बर, 2012

का.आ. 3400.—कोयला धारक क्षेत्र (अर्जन और विकास अधिनियम, 1957) (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1776 तारीख 22 मई, 2012 जो भारत के राजपत्र भाग II, खंड 3, उपखंड (ii) तारीख मई 20 – 26, 2012 में प्रकाशित की गई थी उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और भूमि में या उस पर के अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्मांतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और केन्द्रीय सरकार का यह समाधान हो गया है कि ईस्टर्न कोलफील्ड्स लिमिटेड, सैक्टोरिया, डाकघर दिसेरगढ़, जिला बर्द्धवान (पश्चिमी बंगाल) (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है) ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि और उस पर के सभी अधिकार, तारीख 22 मई, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त कंपनी में निहित हो जाएंगे, अर्थात्;

(1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज नुकसान और वैसी ही मदों की बाबत किए गए सभी संदायों के केन्द्रीय सरकार को प्रतिपूर्ति करेगी;

(2) उक्त अधिनियम की धारा 14 के अधीन केन्द्रीय सरकार शर्त (1) के अधीन, सरकारी कंपनी द्वारा संदेय रकमों का अवधारण करने के प्रयोजन के लिए एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किये जायेंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकार के लिए या उसके संबंध में जैसे अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इसी प्रकार सरकारी कंपनी द्वारा वहन किये जायेंगे;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदाधिकारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेंगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदाधिकारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;

(4) सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और भूमि में या उसके उपर इस प्रकार निहित अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों को, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किय जाएं, पालन करेगी।

[सं. 43015/2/2009-पीआरआईडब्ल्यू-1]

ए. के. दास, अवर सचिव

MINISTRY OF COAL**ORDER**

New Delhi, the 15th November, 2012

S.O. 3400.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 1776 dated the 22nd May, 2012 published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the May 20 to 26, 2012, issued under sub-section (1) of Section 9 of the Coal Bearing Area (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) the lands and rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Eastern Coalfields Limited, Sanctoria, Post Office Dishergarh, District Burdwan (West Bengal) (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said act, the Central Government hereby directs that the said lands and all rights in or over the said lands so vested shall with effect from 22nd May, 2012, instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely:—

(1) The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;

(2) A tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals etc. for or in connection with the rights, in or over the said lands, so vested, shall also be borne by the Government Company;

(3) The Government Company shall indemnify the Central Government or its officials against any others expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said lands so vested;

(4) The Government Company Shall have no power to transfer the said lands and the rights to any other person without the prior approval of the Central Government; and

(5) The Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[No. 43015/2/2009-PRIW-I]

A.K. DAS, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 अक्टूबर, 2012

का.आ. 3401.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड, कोच्चि रिफाइनरी कोच्चिन के प्रबंधन के संबंध में निर्यातकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरणाकुलम के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 3/10/2012 को प्राप्त हुआ था।

[सं. एल.-30012/7/2011-आई.आर. (एम)]

जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th October, 2012

S.O. 3401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 10/2012) of the Central Government Industrial Tribunal/Labour Court Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Bharat Petroleum Corporation Ltd. Kochi Refinery (Cochin) and their workman, which was received by the Central Government on 3.10.2012

[No. L-30012/7/2011-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL****TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri D. Sreevallabhan, B.Sc., LLB Presiding
Officer (Friday the 31st day of August, 2012/9th
Bhadrapadham, 1934)

I.D. 10/2012

Workman : Shri S. Jayakrishnan,
House No. X/334,
Thirumuppam Variam,
N. Parur, Ernakulam—693 520.
By Adv. Shri Paulson C. Varghese.

4214 GI/12-4

Management : The General Manager,
M/s BPCL-Kochi Refinery,
Ambalamughal, Cochin.
By M/s. Menon & Pai.

This case coming up for hearing on 31.08.2012 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) Government of India, Ministry of Labour has referred this industrial dispute to this Tribunal for adjudication as per Order No. L-30012/7/2011-IR(M) dated 16.02.2012.

2. The dispute is:

"Whether the action of the management of M/s. BPCL, Kochi Refinery with its headquarter at Mumbai in dismissing the services of Shri S. Jayakrishnan, Staff No. 83194, Cochin AFS vide order dated 08.04.2010 is legal and justified? What relief the workman is entitled to?"

3. After the receipt of the reference it was numbered as I.D. 10/2012 of this Tribunal and notice was issued to the workman and the management. After entering appearance the workman did not file any claim statement in spite of granting several adjournments. The workman and the management remained absent continuously on the successive posting dates and hence the case proceeded with as *ex parte*. It appears that the workman and the management are not interested in the matter. There is no meaning in keeping this case indefinitely. As the workman and the management have not turned up, there cannot be any adjudication as to the dispute referred to this Tribunal and hence under the circumstances 'No Dispute Award' is passed in this case. The reference is answered accordingly.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31st day of August, 2012.

D. SREEVALLABHAN, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2012

का.आ. 3402.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड, पश्चिमी जोन सांगली के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सांगली के पंचाट (संदर्भ संख्या 2/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 3/10/2012 को प्राप्त हुआ था।

[सं. एल.-30011/67/1999-आई.आर. (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2012

S.O. 3402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. IDA No. 2/2000) of the Central Government Industrial Tribunal/Labour Court SANGLI now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Hindustan Petroleum Corporation Ltd. West Zone (Sangli) and their workman, which was received by the Central Government on 3.10.2012

[No. L-30011/67/1999-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, LABOUR COURT, AT SANGLI

(Presided over by Shri S.R. Navandar)

Ref. (I.D.A.) No. 2/2000.

Exh. No.

Adjudication Between

The General Manager,
West Zone, Hindustan Petroleum,
Corporation Limited, Richardson &
Cruddas Building, 2nd Floor, Sir J.J. Road,
Bhaikhala (Byculla) Mumbai.

1st Party.

And

Shri Vasant Appasaheb Khandekar,

Age:— Major, Occu:— Now Nil,

R/o. Malgaon, Tal—Miraj, Dist.—Sangli.

2nd Party.

CLAIM:—

Reinstatement with continuity of service and full back wages of 2nd Party.

Shri S.S. Shevade, Advocate for 1st party

Shri K.D. Shinde, Advocate for 2nd Party.

AWARD

FIRST PART

(Delivered on 10th day of August, 2012)

This is a reference made under Section 10 of the Industrial Disputes Act. (hereinafter referred to as the "Act").

(2) Certain admitted facts are as follows:—

2nd party workman Vasant Khandekar was serving with the 1st party Company since 01/06/1988. he was charge-sheeted for misconduct of habitual absenteeism on 07/12/1993. On considering his explanation dt. 16/12/1993 Domestic Enquiry was initiated against him and thereafter he has been dismissed from service on 16/08/1994. After

dismissal the 2nd party workman had approached Conciliation Officer claiming reinstatement and full back wages. No settlement was arrived at in the conciliation proceeding and hence the reference has been forwarded to this court by Government.

(3) **Brief facts of the case of the 2nd party workman are as follows:—**

In the statement of claim Exh. U-2 the 2nd party workman has contended that the enquiry conducted against him was not fair and proper. He was not given sufficient opportunity to represent himself and to lead evidence in the domestic enquiry. The Enquiry Officer obtained his signature on already typed paper and treated it as his confession and recorded affirmative findings against the charges levelled against him. The 2nd party workman does not know english language and still the enquiry proceeding was held in english language. Representative of the 2nd party workman was not allowed to enter the premises where the enquiry was held and as such grave prejudice has been caused to the 2nd party workman.

(4) It is further alleged that the Enquiry Officer did not refer the contents of charge-sheet, his reply and the documents on record, that the documents which were not filed on record were referred by the Enquiry Officer and on that basis the findings were recorded which are perverse. There was no evidence to mark affirmative findings to the charges levelled in the enquiry and hence the enquiry as well as the findings of Enquiry Officer need to be quashed.

(5) The 1st party company has resisted the claim by filing its Written Statement at Exh. C-2. It has specifically denied that any illegality has been committed in holding domestic enquiry of the 2nd party workman. It is further denied that the findings of Enquiry Officer are perverse or based on no evidence. According to the 1st party company the 2nd party workman was a case of habitual absenteeism. The enquiry was initiated against him on the report made by his Superior Officer. It is contended that the 2nd party workman was allowed representation through Union or any co-worker. However, despite of that he had pleaded guilty. As his plea was voluntary it was accept by the Enquiry Officer. It is further contended that the findings of Enquiry Officer are based firstly, upon the admission of guilt by the 2nd party workman and secondly, on the record available with the Enquiry Officer. It is further contended that the past record of the 2nd party workman was poor as he used to remain absent frequently without assigning any reason. As such there is no illegality either in the proceeding of enquiry or in the findings of the Enquiry Officer.

(6) The 2nd party workman has examined himself on oath at Exh. U-8. He has not filed any document on record.

(7) The 1st party company has not led oral evidence. It has filed on record the enquiry papers including different

notices issued to the 2nd party workman for absenteeism since year 1991 to 1993 with list dt. 11/12/2006.

(8) Heard Learned Advocate Mr. Mulani for the 2nd party workman and Learned Advocate Mr. S.S. Shevade, for the 1st party company.

(9) Issues under determination are quoted hereinafter. I record my findings against them for the reasons to follow:

ISSUES	FINDINGS
(1A) Whether the enquiry held against the 2nd party workman is illegal, improper and bad in law?	In the negative.
(1B) Whether the findings recorded by the Enquiry Officer are perverse?	In the negative.
(2) What order?	Reference part 1 is rejected as per final order.

REASONS

(10) **As to issue No. 1A:—**

Admittedly, the 2nd party workman did not attend the duty for months of June and July, 1993. Then he had appeared in the August and then again in November and December, 1993 he remained absent without prior permission nearly for entire period. It was therefore he was charge-sheeted on 07.12.1993. On receipt of the charge-sheet he had submitted his explanation. On considering his explanation the Management thought it fit to conduct the domestic enquiry for the alleged misconduct. Accordingly, the 2nd party workman was informed of the fact. The time and venue of the enquiry was also informed to him. The 2nd party workman had participated the enquiry by presenting himself before the Enquiry Officer. Enquiry proceeding dt. 31.05.1994 denotes that the Enquiry Officer had firstly verified whether the 2nd party workman had received copy of charge-sheet and whether he had understood the charges. Thereafter, he had questioned him as to whether he pleads guilty, to which the 2nd party workman has answered in affirmative. After recording plea of guilt the Enquiry Officer addressed his findings. The report of Enquiry Officer is not only based upon the plea of the 2nd party workman but also on his service record.

(11) It is submitted on behalf of the 2nd party workman that he is not conversent with english language in which the enquiry has been conducted and further that his signature were obtained on a typed paper without giving understanding of the contents therein. It is therefore argued that the plea of guilt of the 2nd party workman cannot be said to be voluntary being recorded with the undue inference and fraud.

(12) It is pertinent to note that the statement of claim filed in the present case is in english language. The examination-in-chief of the 2nd party workman is also filed in english language and he has signed everywhere in english. Therefore, it cannot be believed that the 2nd party workman is either not conversent with english language or he was not aware of what was scribed on the paper by the Enquiry Officer. He was knowing the purpose of the enquiry. A detail explanation was submitted in writting by him which is before initiation of the domestic enquiry. Therefore, it is not possible that he would have signed the plea without going through the contents.

(13) The 2nd party workman has been dismissed from service on 16.08.1994. If he would not have really admitted the guilt before the Enquiry Officer he must have made hue and cry. He must have lodged his grievance with the Superior Authorities immediately after declaration of decision of his dismissal. Instead he kept mum. He has approached the Conciliation Officer after about five years of his dismissal. His conduct shows that there is no substance in the allegations of the 2nd party workman and the plea recorded by the Enquiry Officer was voluntary and with full understanding of the 2nd party workman.

(14) There is no flaw in the procedure of the domestic enquiry conducted by the Enquiry Officer in the present case. Opportunity was given to the 2nd party workman to be represented by any member of Union or co-worker. Though it is alleged that a Union Representative had accompanied him but was not allowed to enter the premises of enquiry, it holds no water. Again such type of complaint has not been made by him on earlier point of time. His conduct is against the nature and hence the allegations cannot be accepted and relied upon.

(15) What can be gathered from the facts is that sufficient opportunities were given to the 2nd party workman before and during the enquiry to represent himself and to lead evidence. The Enquiry Officer has followed the principles of natural justice. However, when the 2nd party workman had pleaded guilty, it was not necessary for him to go into details by recording evidence of Management witnesses. Therefore, I find that the enquiry conducted against the 2nd party workman was fair and proper. Accordingly, I answer issue No. 1A in the negative.

(16) As to issues No. 1B:—

Apart from the plea of the 2nd party workman the Enquiry Officer had also gone through his service record and got verified fact of absenteeism. As such there was independent corroborative material produced before him to show that this is a chronic case of willful absenteeism. The 2nd party workman was absent for 70 days in year 1992 and continuously more than that in the subsequent year. He had not attended duty in June, July, November and December of year 1993 and had also not taken prior permission from the authority. Considering the period of

absentee of the 2nd party workman the findings arrived at by the Enquiry Officer cannot be said to be perverse. Hence, I answer issue No. 1B in the negative and proceed to pass the following order.

ORDER

1. It is hereby declared that the domestic enquiry conducted against the 2nd party workman is fair and proper, and the findings of Enquiry Officer are not perverse.

2. Matter to proceed.

Sangli.

S.R. NAVANDAR, Presiding Officer

Date:—10.08.2012

नई दिल्ली, 10 अक्टूबर, 2012

का.आ. 3403.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड बड़ोदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या 143/2010 पुराना नं० 375/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/10/2012 को प्राप्त हुआ था।

[सं. एल- 30011/73/2007-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2012

S.O. 3403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 143/2010, Old No. 375/2009) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s ONGC Ltd (Baroda) and their workman, which was received by the Central Government on 03.10.2012.

[No. L-30011/73/2007-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present.....

Binay Kumar Sinha,

Presiding Officer,

CGIT cum Labour Court,

Ahmedabad, Dated 29.08.2012

Reference : CGITA of 143/2010

Reference : ITC 375/2009 (Old)

1. The Executive Director—
Basin Manager, ONGC Ltd.,
Western Sector, Makarpura Road,
Baroda-390009
 2. The General Manager/Support Manager,
ONGC Ltd., Makarpura Road,
Baroda-390009
 3. The Dy. General Manager (Mechanical),
Incharge Central workshop,
ONGC Ltd., Baroda
 4. The Dy. General Manager (Medical Service),
Health Centre, ONGC Ltd.,
Makarpura Road, Baroda-390009
 5. The Dy. General Manager,
Incharge Regional Store,
ONGC Ltd., Makarpura Road,
Baroda-390009
 6. M/s. Metro Tours & Travels,
Hujrat Paga Road,
Behind Jubilee Baug,
Vadodara (Gujarat)-390001 ... First Parties
And their workman
Through The Working President,
Petroleum Mazdoor Sangh, "Shram Sadhna",
Opp. Police Parade Ground, Raopur Road,
Vadodara (Gujarat)-390001 ... Second Party
- For the First Party: Shri K. V. Gadhia, Advocate
Shri Yogi K. Gadhia, Advocate
- For the Second Party: None

AWARD

On raising Industrial Dispute by the Union Petroleum Mazdoor Sangh raising demand for reinstatement and regularization of services of Shri Anand Amir Singh Parihar, Ex-Ambulance Driver in the establishment of ONGC Ltd. before the conciliation officer, the conciliation failed and the conciliation officer sent failure report to the Appropriate Government. Consequent upon consideration of the Industrial Dispute existing between the employers in relation to management of ONGC and their workman, the Appropriate Government/Government of India, Ministry of Labour by its order No. L-30011/73/2007 IR (M) New Delhi dated 05.05.2008 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad under clause (d) of such section (1) and Sub-section 2A of Section 10 of the ID Act, 1947 formulating the terms of reference as follows:—

SCHEDULE

“Whether the demand of the Petroleum Mazdoor Sangh, Baroda for reinstatement and regularization of services of

Shri Anand Amir Singh Parihar, Ex-Ambulance Driver in the establishment of ONGC Ltd., Baroda is legal, just and proper? To what relief the concerned workman is entitled?”

2. The parties were sent notice for appearing in this case and for filing pleading-statement of claim by the second party union/workmen and the written statement by the first party (Management of ONGC Ltd.). The notice from the member Industrial Tribunal (Central) Ahmedabad had earlier been issued to the parties when that Industrial Court was in sesin of this case. Consequent upon notice the management of first party appeared and executed power (Vakalatnama) in favour of its lawyer. Repeated notices were sent also to the union/workman for making appearance and for filing statement of claim. Subsequently the case record received back in this tribunal on 03.01.2011 and again fresh notice were issued to the parties at Ext. 8. In response to the notices the management of first party through its appointed lawyer appeared and making parivy on the dates but the second party union/workman concern failed to appear and also failed to file statement of claim. So, this tribunal has reason to believe that the union/workman concerned has lost interest in this reference case. So it is not desirable to give further adjournment for filing of statement of claim by the second party union. Therefore following order is passed.

ORDER

This reference is dismissed for non-prosecution by the second party union. No order as to any cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 10 अक्टूबर, 2012

का.आ. 3404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड, दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली-1 के पंचाट (संदर्भ संख्या 220/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 3-10-2012 को प्राप्त हुआ था।

[सं. एल-30011/48/99-आईआर(एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 10th October, 2012

S.O. 3404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 220/2011) of the Central Government Industrial Tribunal/Labour Court, Delhi-1 now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corpon. Ltd. (Delhi) and their workman, which was received by the Central Government on 3.10.2012.

[No. L-30011/48/99-IR(M)]

JOHAN TOPNO, Under Secy.

4214 GI/12-5

ANNEXURE

**BEFORE Dr. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 220/2011

The General Secretary,
Petroleum Workers Union,
C-160, Sarvodaya Enclave,
New Delhi-110017

... Workmen

Versus

The Chief Manager (P&A),
M/s. Hindustan Petroleum Corpn. Ltd.,
Tower-I, 124, Indira Chowk,
New Delhi-01.

... Management

AWARD

Hindustan Petroleum Corporation Ltd., (In short the Corporation) is engaged in re-fueling and de-fueling aircrafts for domestic as well as international airlines. Aircrafts for domestic flights were re-fueled or defuelled at Terminal I while international flights were given such services at Terminal-II at Indira Gandhi International Airport, New Delhi. When Terminal-II came into operation in the year 1986, all international airlines were shifted to the new terminal of the airport. With a view to organize its operation from a single point instead of multiple points, the Corporation decided to carry out its operation of Terminal-I and Terminal-II, relating to aviation service facilities from Palam Aviation Service Facilities (in short the Palam ASF). Therefore, on the night of 4-12-1998 the Corporation displayed a notice on the notice board to the effect that effective from first shift of 5-12-1998 all employees at domestic as well as international airport will report at Palam ASF, as per shift rota chart. This notice was taken as change in service conditions of the employees by the Petroleum Workers Union (hereinafter referred to as the Union). The Union called upon the Corporation, vide its communication dated 5-12-1998, to withdraw the notice dated 4-12-1998 and permit the employees to work at Terminal-I and Terminal-II, as per their existing duty rosters. The Corporation was of the view that its decision to organize its operation from single point instead of multiple points did not constitute change in service conditions of employees. The Union raised an industrial dispute before the Conciliation Officer. In view of the stand, referred above, taken by the Corporation before the Conciliation Officer, conciliation proceedings failed. On consideration of the failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-30011/48/99-IR(M) New Delhi, dated 26-11-1999, with following terms:—

“Whether merger of Terminal-II with Terminal-I at ASF Palam by HPCL after a period of 13 years result in change of service conditions of the workers at Terminal-II who were shifted on a short notice without being given advance notice of the re-organization/rationalisation of work by the management? If yes, to what relief the workmen are entitled?”

2. The Union filed claim statement pleading therein that the Corporation is one of the leading oil companies which is engaged in marketing and distribution of petroleum products. The Corporation is also engaged in refueling of aircrafts from two terminals at Palam Airport, Terminal-I for re-fueling of domestic flights and Terminal-II at Indira Gandhi International Airport for re-fueling of international flights. A settlement was signed by the Corporation on 16-5-1986 for employees employed by it initially at Palam Aviation Depot known as Terminal-I. With the commissioning of Indira Gandhi International Airport Terminal-II, with effect from 1-5-1986, international airlines shifted their operations from Terminal-I to Terminal-II. Consequently Corporation's international customers had also shifted their operations from Terminal-I to Terminal-II. In view of the settlement, referred above, the Corporation transferred 50% of its staff to Terminal-II for re-fueling international airlines customers. The above two establishments of the Corporation are separate establishments and code No. 192 was allotted to Terminal No.-II by the Corporation in May, 1986. About 12 employees were deployed at Terminal-I and about 14 at Terminal-II by the Corporation.

3. Two separate duty rosters were issued for the employees deployed at Terminal-I and Terminal-II, pleaded the Union. On the night of 4-12-1998 the Corporation displayed a notice on the notice board mentioning therein that effective from first shift of 5-12-1998 all employees working at domestic as well as international flights will report at Palam ASF, as per shift roster. New duty roster effected change in service conditions of the employees, which change are as follows:—

- (i) Terminal No. II faced closure without notice.
- (ii) Workmen employed at Terminal-II were compelled to report to another location about 7-8 Km. away from their present location at Terminal-I.
- (iii) Workmen at Terminal No. II were directed to re-fuel domestic flights in addition to their existing duties to re-fuel international flights and in the same manner workmen deployed at Terminal-I were directed to re-fuel international flights in addition to domestic flights.
- (iv) For re-fueling flights at international airport the workmen were required to cover extra round trip of 15-16 Kms. from Terminal-I.

- (v) For re-fueling international flights equipment had to be brought from a distance of 7-8 Kms. The employees had to run here and there to change equipments while the aircraft was standing at the bay.
- (vi) Workmen working at Terminal-II used to get subsidized lunch on coupons through IOC canteen at Terminal-II and BPCL canteen at Terminal-I. No alternative arrangement was made for subsidized lunch.
- (vii) By change of location the Corporation had increased work burden of employees. Sometimes a sweeper is asked to work as a crewman and contract employees to refuel flights.
- (viii) A special crewman, deputed to look after 7 underground tanks at joint hydrants for flushing equipments, up-keep of diesel engines and all kind of quality control, was withdrawn and workmen were compelled to do lower grade job of crewmen.
- (ix) Previously the workmen deployed at Terminal-II used to get two offs after six days continuous work but now one off is given. Some workmen have been changed to general shift and would have to put extra hours of work, and
- (x) Periodical examination of the employees, after a specific time interval dependant on their age profile, has been withdrawn.

4. The Union pleads that under the provisions of Industrial Disputes Act, 1947 (in short the Act), no employer shall change conditions of service of workmen without giving 21 days notice to the employees who are affected by such change. No such notice was given by the Corporation. Long Term Settlement was signed by the Corporation with the Union on 9-5-1995. As per clause 28(b) of the said settlement, terms and conditions of service, prevailing prior to the said settlement and not varied, were to continue as deemed to have been provided in the settlement. The change made by the Corporation is arbitrary and violative of long term settlement. It is claimed that the Corporation be commanded to re-direct employees shifted from Terminal II to Terminal-I to their original position and status-quo ante be brought back, relating to their conditions of service. The benefits and facilities, which were withdrawn/withheld, may be restored, pleaded the Union.

5. The claim was demurred by the Corporation pleading that its decision to reorganize its operation from a single point instead of multiple point of work nowhere causes any change in wages, hours of work, starting, alteration or discontinuance of shift working, withdrawal of any customary concession or privileges or changes in usages. The decision is not violative of Section 9-A of the Act. The

Corporation had issued a notice dated 1-12-1998 with a view to operate aviation service facilities from single point. It was so done in the light of job and market requirements, since it was advantageous for the Corporation to provide aviation service facilities centrally from Palam ASF. No change in service conditions of its employees took place and as such the Corporation was not required to serve a notice, as contemplated by Section 9-A of the Act. The appropriate Government had not considered all these facts and referred the dispute to this Tribunal for adjudication without application of mind.

6. In the year 1986, with commissioning of IGI Airport Terminal-II, operation of international airlines were shifted to new terminal. As per clause-2 (c) of the Certified Standing Orders, Terminal-I and Terminal-II are part of the same establishment. Operation for fueling of aircrafts were headed by one Manager. Two terminals were brought into operation to separate parking of domestic from international aircrafts, with a view to reduce traffic congestions and passenger loads on the terminals. The Corporation does not dispute signing of settlement dated 16-5-1986 whereby it was agreed that terms and conditions of employees, shifted from Terminal-II, would remain the same. In order to ensure market competitiveness and job flexibility long term settlement was signed on 20-5-1995. Self lease scheme for non-management employees was introduced by the Corporation with effect from 1-4-1997. Refusal of the Union to start operation from single point affects day to day operations and business commitment of the aviation industries and is violative of undertaking given in Self Lease Scheme.

7. Several rounds of discussion took place between the Corporation and the Union with a view to have effective utilization of man power. Corporation formed a uniform policy of having its aviation service facilities from one point, since it was uneconomical to have operations from two points. The employees move in vehicles from one point to another for refueling or defueling of aircraft's within the same compound. After a year of discussion, the Corporation displayed roster on 1-12-1998 indicating shift schedule of the employees. Vide notice dated 4-12-1998 it was simply conveyed that man power would report at a single point instead of multiple points and synchronized duties of employees of Palam ASF. Since any form of private transportation is not allowed inside the airport due to security reasons, all claimants have always been reporting at Palam ASF from where they were taken in jeeps by the concerned shift officers at Terminal I or Terminal II. Equipments used at respective terminals are parked at those points and only employees are taken in jeeps to these terminals at least one hour before arrival of flights. The Corporation denied that Terminal II faced closer without notice. It is disputed that the employees would be compelled

to report to another location about 7-8 Kms. away from their present location. It has also been disputed that they had to cover extra round trips of 15-16 Kms. to refuel flights from Terminal No. 1. As per arrangement they would first report at one place and thereafter would be travelling in vehicles provided by the Corporation for refueling or defueling of aircraft's within the same compound. The claimants are provided either two wheeler soft loans or fixed reimbursement of conveyance charges for reaching scheduled place of work at Palam ASF. Operations at Palam ASF are carried on job requirements and that too depending upon number of flights. It is immaterial whether fueling or defueling is done for international or domestic flights since it is done within the same compound/establishment. It has been denied that the Corporation had not made any alternative arrangement for the employees to have subsidized lunch. Employees are paid monthly coupons for the value of Rs. 540, which can be purchased by them on payment of Rs. 180. They can use those coupons at various canteens/stalls being run at Terminal I and Terminal II. In addition the employees are paid two coupons of tea for each attendance. It has been disputed that sweeper is asked to do work of crewmen or contract employees are deployed to refuel flights. It has also been disputed that the employees are compelled to do lower grade job. There had been no change in weekly offs as alleged. It has been denied that the employees have been changed to general shift and are required to put extra hours of work. Periodical medical examination facilities have not been withdrawn. Since no change in conditions of service was effected, the Corporation was not required to give 21 days' notice. It has been claimed that the Union had presented a mis-conceived story, hence its claim may be discarded.

8. On 20-4-2005, an award was passed by the Tribunal, when the Union failed to adduce evidence, despite various opportunities granted to it.

9. The Tribunal considered the application, moved by the Union for setting aside the award and granted it vide order dated 19-5-2005. The award, so passed, was set aside by the Tribunal.

10. Vide Order No. Z-2201916/2007-IR(C-II) New Delhi, dated 11.2.2008 the case was transferred to Central Government Industrial Tribunal No. II, New Delhi, for adjudication by the appropriate Government. It was retransferred to this Tribunal, vide order No. Z-2201916/2007-IR(C-II) New Delhi dated 30-3-2011, for adjudication.

11. Shri Raj Kumar and Shri K.L. Chhabra were examined by the Union to establish its case. Shri Mahesh Kumar Dhingra entered the witness box to unfold facts on behalf of the Corporation. No other witness was examined by either of the parties.

12. Written arguments were filed by Shri K.L. Chhabra on behalf of the Union. Shri Rajesh Kumar, authorized representative, also presented written submissions on

behalf of the Corporation. They opted not to advance oral arguments. I have given my careful consideration to the facts submitted through written submissions and considered the record minutely. My findings on issues involved in the controversy are as follows.

13. Shri Raj Kumar projects in his testimony that at Terminal-I lunch facility was provided by way of coupons till 1996-97. Thereafter this facility was not provided. He admits that all employees of Terminal I and Terminal II work in one compound. Employees, deployed at Terminal I and II, do the same nature of job. He does not dispute that employees cover distance from Terminal I to Terminal II or vice-versa by jeep provided by the Corporation. Pay or salary of the employees was not reduced. There was no change in salary of the employees of Terminal II, who were directed to report at Terminal I after December 1998. He makes a candid admission that there was no change in duty hours after December 1998. There was no change in shift policy or in starting the shift. He felt ignorant as to whether the Corporation introduced policy of aviation facilities from one point on all India basis. According to him, the employees adopt routes as per instructions of the authorities. The authorities instruct them to go by a shorter route. He projects that no employee deployed at Terminal I and II was retrenched after December 1998. According to him weekly off was not given since 2000. He hastens to add that one weekly off was given to them. Shri K.L. Chhabra also admits that employees go from Terminal I to Terminal II in a vehicle provided by the Corporation. According to him, wages of the employees were not reduced. He concedes that employees were given coupons of Rs. 540 for encashment in canteen every month.

14. Out of facts projected by the Union through its witnesses and the Corporation through Shri Dhingra it came to light that the Corporation took a decision to re-organize its operation of re-fueling and de-fueling of aircrafts for domestic and international flights from a single point instead of multiple points. It was so done with a view to meet job requirement, market requirements and in consonance with long term settlement entered into between the Union and the Corporation. Terminal-I and Terminal-II were within the perimeter wall and employees of the Corporation were reporting at a single place, from where they were transported to Terminal-II through jeeps provided by the Corporation. The Corporation formed a policy of having aviation service facilities from one point on all India basis. The said policy was implemented at Palam ASF as well. Implementation of that policy was preceded by discussions between the Union and the Corporation. The Corporation displayed a roster on 1-12-1998 indicating shift schedule of employees. On 4-12-1998 a notice was displayed whereby it was conveyed to the employees that they would report for duty at a single point instead of multiple points and duties of employees were synchronized due to operational requirements.

15. Question for consideration comes as to whether displaying roster on 1-12-1998 and notice on 4-12-1998, calling upon the employees to report at a single point instead of multiple points, amount to alteration or change in conditions of service applicable to them? Expression "conditions of service" is an expression of wide import. Conditions of service means those condition which regulate holding of a post by a person right from his appointment till retirement. Judicial pronouncements include termination of service within the conditions of service of an employee. There was no provision in repealed Trade Disputes Act 1929 or in the Act providing for notice of change in condition of service applicable to workmen. As a result of persistent demand Sections 9A and 9B of the Act, besides Fourth Schedule were introduced in the statute book. Introduction of Section 9A prevents unilateral action on the part of the employer in changing conditions of service, to the prejudice of the workmen. The real purpose of the above provision is "to offer an opportunity to the workmen to consider the effect of proposed change, if necessary, to present their point of view on the proposal" and as such consideration would further serve to stimulate a feeling of consent and joint interest of the management and workmen in industrial progress.

16. The Fourth Schedule appended to the Act enumerates conditions of service for change of which notice is to be given. Item 1 of the said schedule speaks in respect of change in wages, including the period and mode of payment. Item 4 of the schedule contemplates change of hours of work and rest intervals while item 5 speaks of leave, holidays and wages. Item 6 of schedule deals with starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders. Item 8 takes care of withdrawal of any customary concession or privilege or change in usages. Therefore when an employer wants to alter or discontinue shift working of its employees, reduce wages including period and mode of payment, change in hours of work and rest intervals, leaves and holidays and withdrawal of any customary concession or privileges or change of usages, he is required to follow the procedure provided in Section 9A of the Act. Word "start" means "to begin" or "cause to begin something or cause to go into being or operation" while "alteration" would denote "change or modification of the existing situation" and "discontinuance" would mean "to go or bring to an end". Therefore, when shift working is put in operation, altered or discontinued a notice, as required by Section 9A of the Act is to be served. For application of provisions of Section 9A of the Act there should be change in the conditions of service as enumerated in Fourth Schedule appended to the Act.

17. Now it would be considered as to whether the Union had been able to project that there was change in conditions of service requiring applicability of Section 9A of the Act. At the cost of repetition it is projected that

Shri Raj Kumar unfolded that there was no change in wages/salary of the employees of Terminal-II who were directed to report at Terminal-I after December 1998. He made a candid admission that pay/salary of the employees were not reduced. Shri Chhabra also deposed facts in the same vein. None of them project that either wages of the employees including period and mode of payment were changed by the Corporation. Therefore, it is crystal clear that the Corporation did not affect any change in the wages including period and mode of payment of the wages to the employees, who were ordered to report at Terminal I from Terminal II, on the strength of notice dated 5-12-1998.

18. Much hue and cry has been made by the Union to project that hours of work and rest intervals of the employees were changed. The Corporation presents that roster was displayed on the notice board on 1-12-1998. This proposition has not been disputed either by Shri Raj Kumar or Shri Chhabra. It is a matter of common knowledge that roster of duties of employees projects their hours of work and rest intervals. Copy of staff duty roster for Terminal-I as well as Terminal-II for December, 1998 has been relied by the Union. I have gone through those two rosters and could not notice any change in their hours of work and rest intervals. Therefore, it is evident that facts projected by Shri Chhabra that working hours were increased from 8 hours to 9 hours are not in consonance with documents, relied and filed by the Union. Start, alteration and dis-continuance of shift working was not done at all when notice dated 4-12-1998 was displayed by the Corporation.

19. The notice, which had evoked feelings of injustice amongst the employees in the prime document, contents of which are hereby re-produced thus:—

"Reference is made to the discussions the management had with employees of Palam ASF regarding integration of manpower of both Domestic & International Airport at Palam ASF as one location due to operational reasons.

Accordingly, effective the first shift of 5-12-1998, all the workmen at both Domestic as well as the International Airport will report at Palam ASF T-I as per the shift rota chart displayed along side of this notice.

All workmen are advised to take notice of the same and report to the Manager Palam ASF, as per their shift rota".

20. Contents of above notice make it apparent that neither wages including period and mode of payment, hours of work and shift intervals, leave and holidays, withdrawal of any customary concession or change of usage or starting, alteration or dis-continuance of shift working was done by the Corporation. No change in conditions of service of employees was effected by the Corporation requiring compliance of Section 9-A of the Act.

21. The Union agitates that the employees had to travel 7-8 Kms. from one terminal to another for refueling and

4214 61/12-6

defueling of aircrafts. On this count the Corporation projects that the two terminals are within the perimeter wall of the airport and even prior to 4-12-1998 all employees used to report at one point from where they were transported in jeeps to Terminal II by the Corporation. After 4-12-1998 they are transported from one terminal to another for refueling and defueling of aircrafts, one hour before arrival of the aircraft. Earlier transportation was done once in a day but now it may be more than once for refueling and defueling. This transportation cannot be termed as change in conditions of service.

22. Supply of coupons for purchase of subsidized food has not been disturbed by the notice referred above. Periodical medical examination is also not subject of change. Same is the case in respect of other conditions of service applicable to the employees. It is nowhere shown that any customary concession or privilege or usages was withdrawn or changed by the Corporation. Therefore, it is crystal clear that the Corporation had not changed any conditions of service when notice, referred above, was displayed.

23. When service conditions of employees are not changed in December 1998, this Tribunal cannot take notice of the acts which occurred subsequently, since complaint under Section 33 of the Act was never filed by the Union. Shri Raj Kumar presents that only one day weekly off was given after 2000. Shri Chhabra projects that weekly off was withdrawn subsequently. Out of facts unfolded by them, it emerges that in the year 2000 one day weekly rest was withdrawn. Question for consideration comes as to whether this Tribunal can enlarge the scope of reference. The answer lies in negative. The Tribunal being creature of statute is bound to act within the parameters provided by the statute. It cannot enlarge the scope of reference sent to it for adjudication. As pointed above reference was sent in December 1999. Subsequent events cannot be introduced in the reference for the purpose of adjudicating it. Therefore while adjudicating the reference I cannot take note of the proposition that in the year 2000 one day weekly rest was withdrawn.

24. However, Section 33 of the Act ensures fair and satisfactory enquiry pending adjudication proceedings by way of providing a safeguard against victimization of workman concerned or to prevent unfair labour practice on the part of the employer at that stage. A ban subject to certain conditions has been imposed on ordinary rights of the employer to alter terms of his employee's service to their prejudice or to terminate their service under general law governing the contract of employment. Section 33 of the Act bars alteration in conditions of service prejudicial to the workmen concerned in the dispute with the permission of the authorities before whom the proceeding are pending. Section 33A of the Act provides for relief against contravention of Section 33 by way of adjudication of the

complaint made by aggrieved workman, considering such complaint as dispute referred or pending in accordance with the provision of the Act. Ban, so imposed is not to restrict interference on general rights and liabilities of the parties under ordinary law. However, when an employer violates ban so imposed, the employee may approach the Tribunal with a complaint under Section 33A of the Act or the appropriate Government for getting the dispute referred to an adjudicatory authority for adjudication.

25. Here in the case the Union has not filed a complaint under Section 33A of the Act before this Tribunal. The Union has also not approached the appropriate Government for making a reference for adjudication, when their weekly off was reduced by the Corporation in the year 2000. Under these circumstances this Tribunal cannot proceed to take cognizance of that proposition since it would amount to enlarging the scope of reference. In view of these reasons, I am of the view that the Tribunal should refrain its hands in respect of reduction of weekly off by the Corporation in the year 2000. Taking in to considerations, the reasons detailed above I am of the considered opinion that the claim put forward by the Union is devoid of merits. No relief is to be accorded to the Union. Accordingly, the claim is brushed aside. An award is passed in favour of the Corporation and against the Union. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ.3505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन एयरलाइन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (आई डी संख्या 59/2000 एवं 60/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल-11012/77/1999-आईआर (सीएम-1),
सं. एल-11012/76/1999-आईआर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2000 & 60/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial dispute between the management of M/s. Indian Airlines and their workmen, received by the Central Government on 22-10-2012.

[No. L-11012/77/1999-IR(CM-I),

No. L-11012/76/1999-IR(CM-I)],

AJEET KUMAR, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
"SHRAM SADAN",
III MAIN, III CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR,
BANGALORE-560 022

Dated: 14.09.2012

PRESENT

Shri S.N. NAVALGUND

PRESIDING OFFICER

C.R. No. 59/2000

I PARTY

Shri Suresh,
No. 36, Near Kuppaswamy
House,
NewThippasandra,
Bangalore

II PARTY

The Station Manager,
Indian Airlines,
Bangalore Airport
Bangalore-560001

CR NO. 60/2000

I PARTY

Shri Munivenkatappa
No. 3544, 32nd Cross,
9th Main Road,
II Stage,
Banashakari,
Bangalore-560070

II PARTY

The Station Manager,
Indian Airlines,
Bangalore Airport,
Bangalore 560001

COMMON AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred these two disputes vide order No.L-11012/77/99-IR (C-1) dated 18/22.08.2000 and No. L-11012/76/99-IR (C-1) dated 18/22-8-2000 for adjudication on the following Schedules :

SCHEDULE (59/2000)

"Whether the management of Indian Airlines is justified in terminating the services of Shri S. Suresh, Casual Labourer, from January, 1993 without considering him for the post of Loader? If not, to what relief the disputant is entitled?"

SCHEDULE (60/2000)

"Whether the management of Indian Airlines is justified in terminating the services of Shri Munivenkatappa, Casual Helper, from January 1993 without considering him for the post of Loader? If not, to what relief the disputant is entitled?"

2. In CR No. 59/2000 the first party in his claim statement assert that he was working on the establishment of the Indian Airlines (herein after referred the second party) as a labourer since 1986 continuously without any break in Bangalore Airport. When the second party invited application for the post of loaders for Karnataka region he appeared for interview and was selected and included in the select list along with 13 other persons who were junior to him and he continued in service up to 31.07.1993 and the second party without complying Section 25F of the ID Act terminated his services. It is also alleged in the claim statement that in fact he has worked for more than 240 days in a given year right from 1986 to 1993. With these allegation he has prayed to declare his termination w.e.f. 31.07.1993 being arbitrary, illegal and to restore him to his original position with consequential benefits like backwages, continuity of service etc.

3. Similarly in CR No.60/2000 the workman asserted that he was working in the establishment of the second party as labourer since 1985 continuously and without any break in Bangalore Airport and when the second party invited applications for the post of loaders in Karnataka region he too appeared for interview and was selected and included in the select list with 13 other persons who were junior to him and that he continued in service upto 31.07.1993 but the second party without complying the provisions of Section 25F of the ID Act terminated his services w.e.f. 31.07.1993 though he had worked for more than 240 days in a given year right from 1985 to 1993. With these allegations he has prayed to declare his termination w.e.f. 31.07.1993 being arbitrary, illegal and to restore him to his original position with consequential benefits like backwages, continuity of service etc.

4. The Second party in its counter statement to the claim filed in CR No. 59/2000 contended that the first party had filed a Writ Petition No. 24909/93 on the file of Hon'ble High Court of Karnataka seeking regularization of his services and same came to be dismissed by order dated 12.07.1996 and even the writ appeal preferred by him in Writ Appeal No. 161/98 came to be dismissed as barred by time with observation that dismissal of the writ petition and writ appeal would not come in the way of approaching the concerned authority under ID Act if he is otherwise entitled for the relief under the provisions of the said act and then the first party raised the industrial dispute before the Regional Labour Commissioner (Central), Bangalore which ended in failure and then the Central Government made this reference. It is further contended that he who was engaged as a casual labourer had worked only for 90 days in a span of one year during the years 1988 and 1992/93 whose services were availed on need basis and having regard to the fact that he has not worked for 240 days or more in any particular year and his engagement was only for a specific period his case squarely fall under Section 2(oo)(bb) of the ID act there being no renewal of contract

or employment it is an exception to retrenchment. It is also contended that while appointing candidates the company has to abide by various orders and guidelines issued by the Government of India from time to time regarding reservations etc. and the first party who had applied for the post of loader in the company was also interviewed along with other eligible candidates by duly constituted selection board and a merit list of selected candidates were drawn wherein 53 General, 27 SC, 02 ST and 2 Ex-servicemen were listed and the same was approved by the competent authority on 17.01.1992 and the panel was valid for 2 years upto 16.01.1994 and extended upto 31.03.1994 and so far 12 candidates from the merit list are offered appointment and first party figured at Sl.No. 31 in the merit list and the said list has been lapsed. It is also contended that on account of absenteeism of regular employees beyond what is normally anticipated, casual/badlis who are available are engaged for that particular day/shift according to work requirements. Therefore, the first party cannot claim any right for appointment in the company since his appointment was for a special period and on need basis therefore Section 25F is not applicable to the facts of the case and the reference is liable to be rejected. Similarly the Second party filed counter statement to the claim filed in CR No. 60/2000 contending that the first party filed a Writ Petition No. 31455/93 on the file of Hon'ble High Court of Karnataka seeking regularization of his services and same when came to be dismissed by order dated 12.07.1996 he preferred writ appeal No. 1612/98 and that also Writ Appeal No. 1612/98 came to be dismissed as barred by time with observation that dismissal of the writ petition and writ appeal would not come in the way of approaching the concerned authority under ID Act if he is otherwise entitled for the relief under the provisions of the said act and then the first party raised the industrial dispute before the Regional Labour Commissioner (Central), Bangalore which ended in failure and then the Central Government made this reference. It is further contended that he who was engaged as casual labourer had worked only for 90 days in a span of one year during the years 1988 and 1992/93 whose services were availed on need basis and having regard to the fact that he has not worked for 240 days or more in any particular year and his engagement was only for a specific period his case squarely fall under Section 2(o)(bb) of the ID Act, there being no renewal of contract or employment there it is an exception to retrenchment. It is also contended that while appointing candidates the company has to abide by various orders and guidelines issued by the Government of India from time to time regarding reservations etc. and the first party who had applied for the post of loader in the company was also interviewed along with other eligible candidates by duly constituted selection board and a merit list of selected candidates were drawn wherein 53 General, 27 SC, 02 ST and 2 Ex-servicemen were listed and the same was approved by the competent authority on 17.01.1992 and the panel was valid for 2 years upto 16.01.1994 and

extended upto 31.03.1994 and so far 12 candidates from the merit list are offered appointment and first party figured at Sl.No.30 in the merit list and the said list has been lapsed. It is also contended that on account of absenteeism of regular employees beyond what is normally anticipated, casual/badlis who are available are engaged for that particular day/shift according to work requirements. Therefore, the first party cannot claim any right for appointment in the company since his appointment was for a special period and on need basis therefore Section 25F is not applicable to the facts of the case and the reference is liable to be rejected.

5. When the matter was posted for evidence, on behalf of the second party while filling the affidavit of Assistant Manager (P) in the second party company, examining him on oath as MW1 two casual identity cards in respect of Mr. S.Suresh the first party in CR No.59/2000 as Ex.M1; Xerox copy of the letter dated 28.2.2000 by Ministry of Labour to the station master and letter dated 9.12.1993 showing the details of the number of days worked by the first party as Ex. M2 & M3 respectively. Similarly in CR No. 60/2000 as well the affidavit of the same officer was filed and examining him on oath as MW1 two casual identity cards in respect of the first party in CR No. 60/2000 as Ex. M1; Xerox copy of the letter dated 28.2.2000 by Ministry of Labour to the station master and letter dated 9.12.1993 showing the details of the number of days worked by the first party as Ex.M2 & M3 respectively. Inter alia in both the references the first party have filed their affidavits as WW1 subjected themselves for cross-examination without producing any documents. After adducing the evidence inspite of grant of several adjournments for arguments neither the first party workman nor their counsel appeared and addressed their arguments to substantiate their claim. Whereas the learned advocate appearing for the second party urged the first party workman in both the references were casual labourers there being no evidence they having worked 240 days in any of the calendar year, Section 25F of the Industrial dispute Act is not attracted as such discontinuing them to engage as casual labourer from 31.07.1993 do not amount to illegal retrenchment as such the references are liable to the rejected.

6. On appreciation of the pleadings, oral and documentary evidence brought on record in the light of the arguments addressed by the learned advocate appearing for the second party I have arrived at the conclusion the action of the management being justified for the following reasons:

Reasons

7. Since it has come in the evidence that a list of selected candidates was published on 17.01.1992 and the Serial number of these two workmen was 31 & 30 and out of them 12 at the top appointed and as the list lapses after two years these two workmen could not reach the appointment,

this contention on the part of the second party is substantiated by documentary evidence produced which are not in dispute. As far as the claim of these two workmen that their services were terminated without complying the provisions of Section 25F of the Industrial Dispute Act are merit-less because as per Section 25F a workman employed in any industry and put in continuous service of 240 days in a calendar year his services cannot be terminated without giving one month notice or one month wages in lieu of such notice and if the same is not complied with it would have been illegal and would have been illegal and would have been taken as if there is no such order at all and resulted into reinstatement with backwages. But in the present case the workmen covered in both these references having failed to prove that they worked in any calendar year for a period of 240 days or more than 240 days, as rightly urged on behalf of the second party, Section 25F of the Industrial Dispute Act is not attracted in both these cases. Under the circumstances both these references are liable to be rejected. In the result I pass the following Award:

AWARD

Both the references (CR No. 59/2000 & 60/2000) are rejected holding that the management of Indian Airlines is justified in terminating the services of Shri S. Suresh, casual Labourer & Shri Munivenkatappa, Casual Helper from January, 1993 without considering them for the post of labourer and that they are not entitle for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 14-09-2012)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जेट एयरवेज़ लिमिटेड के प्रबंधन के संबंध में निर्योजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (आई.डी. संख्या 198/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल- 11012/15/2008-आईआर (सी.एम.-I)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 198/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Jet Airways (I) Limited and their workmen, received by the Central Government on 22-10-2012.

[No. L-11012/15/2008-IR(CM-I)]

AJEET KUMAR, Section Officer

4214 GI/13-7

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO.1, KARKARDOOMA COURTS
COMPLEX, DELHI

I.D. No. 198/2011

Shri Vakil Das,
C/o C-36A,
Madhu Vihar
New Delhi-110059

.....Claimant

Versus

The Manager-Human Resources
Jet Airways (I) Limited,
Huma Resources Department,
Indira Gandhi Internal Airport,
Terminal 1 B, New Delhi,
New Delhi -110037

.....Management

AWARD

Shri Vakil Das joined services with M/s. Jet Airways India Ltd. (in short the management) as Loader-cum-Cleaner on 08-01-1997. Due to certain domestic constraints, he tendered his resignation, which was accepted by the management on 28-05-2006. Subsequently, he raised a dispute before the Conciliation Officer, claiming that his services were terminated in an illegal manner. Since conciliation proceedings failed, the appropriate Government referred the dispute to Central Government Industrial Tribunal No. 2, New Delhi for adjudication vide order No. L-11012/15/2008-IR(CM-I), New Delhi dated 25-06-2008 with the following terms :

"Whether the action of the management of Jet Airways (India) Limited, New Delhi in separating Shri Vakil Das, Loader-cum-Cleaner from the service with effect from 15-10-2007 is justified and legal? To what relief is the concerned workman entitled to?"

2. In his claim statement, the claimant pleads that he performed his duties to the best of his ability, honesty and to entire satisfaction of his superiors. Subscription towards ESI contribution was deducted from his salary but that facility was offered only for six months in 1998. Legal facilities, such as appointment letter, attendance card, pay slips, leaves overtime wages etc. were not made available to him. Upto year 2006, wages were credited to his bank account but no details of the wages, including overtime, was provided. Thereafter his salary was paid in cash. Due to his ailment in 1996, he remained under treatment and made a demand to the management to pay him subsistence allowance. His signatures were obtained on a few papers

and he was paid an amount towards his medical leave. On 15-10-2007, his Identity Card was forcibly taken from him by the management and destroyed. Thereafter, he filed a written complaint with the police. He raised a demand for legal facilities, which annoyed his employer. His services were dispensed with on 15-10-2007 in an illegal manner. He claims reinstatement in service, with continuity and full back wages.

3. The management resisted the claim, projecting that the claimant voluntarily resigned from the services on 28-05-2006 due to certain personal reasons. Resignation letter and acceptance letter have been relied. It has been projected that a sum of Rs. 26611.00 was paid to the claimant towards full and final settlement of his dues on 01-06-2006. After getting his terminal benefits, the claimant bade farewell to the management. It is claimed that the matter may be dismissed.

4. Appropriate Government transferred the case to this Tribunal for adjudication vide order No. Z-22019/6/2007-IR(C-II) New Delhi dated 30-03-2011.

5. In order to establish his claim, the claimant entered the witness box to testify facts. Shri Bharat Bhushan, Manager (HR), deposed facts on behalf of the management.

6. During the course of adjudication, the parties reached an amicable settlement. The claimant detailed facts in that regard in his statement, which run as under:

"I have settled my dispute with the management. Cheque No. 916863 drawn for a sum of Rs. 75,000.00 at Nariman Point branch, Mumbai of IDBI Bank Ltd. has been tendered to me towards full and final settlement relating to may claim towards earned wages, leave wages, gratuity, bonus, notice pay, retrenchment compensation and my other claims, if any. It has been accepted by me. Now, no claim remains against the management. My dispute with the management stands settled. My grievances may be answered accordingly."

7. In view of the above statement made by the claimant, it is apparent that dispute between the parties has been settled and there is no necessity to proceed with adjudication process. In terms of facts detailed by the claimant, an award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 26-09-2012

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन

के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (आई.डी. संख्या 239/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल- 20012/336/2001-आई.आर.(सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3407.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 239/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. BCCI. and their workman, which was received by the Central Government on 22-10-2012.

[No. L-20012/336/2001-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri Kishori Ram,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 239 of 2001

PARTIES : Employer in relation to the management of Western Jharia Area of M/s. B.C.C.L. and their workman.

APPEARANCES :

On behalf of the workman : Mr. Surendra Pd, Union Representative.

On behalf of the management : Mr. U.K. Dubey, Rep. of the Management.

State : Jharkhand Industry: Coal

Dated, Dhanbad, the 30th August, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/336/2001-IR(C-I) dated 19-9-2001.

SCHEDULE

“Whether the removal of Smt. Rohni Deswalin/Bhatni Deswalin from the service by the management of BCCL Western Jharia Area is legal and proper? If not, to what relief is the concerned workman entitled?”.

2. The case of the sponsoring union concerned for workwoman Smt. Rohni Deswalin/Bhatni Deswalin is the concerned workwoman had been continuously working as a permanent Shale picker since her appointment at Bhatdee Colliery on 17.10.1971. Thereafter she had been working as Female Security Guard having P.No. 613513 and CMPF A/c No. D-12/163 on her promotion. Her employment was given after due verification of her genuinity ascertained by Police. She continued in employment with clear record of service peacefully and continuing for about 29-½ years. But she was suddenly and to her awful surprise removed from her service with immediate effect as per the letter No. WJA/BHD P.O. 2000/587 dt. 18.3.2000 under clause 28 of the Certified Standing Order of the BCCL Company on the ground of impersonating actual Rohni Deswalin through forgery for fraudulent employment. Her removal letter also revealed that her removal from service was effected on the ground of the charges proved in the enquiry held against her in her knowledge and participation therein, and her fraudulent employment by impersonating aforesaid real Rohini Deswalin. But no enquiry was conducted in her presence nor about police verification against her nor its report received. The enquiry was quite against the principle of natural justice. Moreover, despite neither any body turned herself as real Rohini Deswalin in pretty 29 years of the workwoman nor was any report/letter or complaint of anybody else brought to her notice, the Management arbitrarily and illegally removed her from her long service contrary to the clause 28.0 of the Certified Standing Order or the Standing Order Clause 27. The workwoman was not convicted by a criminal Court for the said charges of fraudulent employment through impersonation. So her claim is for reinstatement with full back wages and other consequential benefits for her idle period w.e.f. 18.3.2000.

3. Further in rejoinder, the sponsoring union for the workwoman with categorical denials has pleaded that the present dismissed workwoman was appointed afresh as per records maintained under Mines Act at Bhatdee Colliery following take over by the Government of India under Nationalisation Act, so the question of impersonation does not arise. Her continuous long service as per her Bonus and Attendance Register the CMPF or legal documentary evidences left no scope for any alleged personation or in any such complaint in lack of non-examination of Bhatni Deswalin or real Rohni Deswalin, Dismissed workwoman Rohani Deswalin after death of her husband remarried a Muslim by adopting another name Aisha Bibi as per Constitutional Law of People.

Unless real Rohni Deswalin appears, the elimination is not possible between Rohni and Bhatni. The police report without appearance and signature/LTI of Rohni Deswalin statement of Kali, Parna and Jauki has no legal value. The action of the O.P. Management is victimisation, false implication based on concoction and colourable exercise of employer, right to utter disregard to the principles of natural justice.

4. Whereas categorically denying the allegation of the Union, in a challenge to the maintainability of the Reference/Industrial Dispute as vague and no locus standi of the sponsoring Union to do so, as the lady workman was never a member of the Union, the case of the O.P./Management is that the dispute, a stale one, raised after many years of cause of action cannot be legal the subject matter of reference under Sec. 10 of the Industrial Dispute Act. One Smt. Bhatni Deswalin w/o Parna Deswalin entered into employment in the name of Sint. Rohni Deswalin W/o Kali Deswalin as Security Guard at Bhatdih Colliery. The enquiry into the complaint of impersonation as Rohni Deswalin was held to the knowledge of the concerned person, who also participated and confessed that her actual name was Aisha Bibi, and that she was Smt. Bhatni Deswalin W/o Parna Deswalin, and was working in the name of Rohni Deswalin W/o. Kali Deswalin. In the writ petition before the Hon'ble High Court, Ranchi Bench, Ranchi, she represented herself as Rohni Deswalin @ Aisha Bibi. These facts establish her as an imposter working with false declaration of Identity and percentage etc. The District Authority also enquired into it, and confirmed that the lady was working as Rohni Deswalin W/o Kali Deswalin by impersonating, and her real name was Aisha Bibi/Bhatni Deswalin. Therefore she was removed from the services of the Company with the approval of the Competent Authority as per order dt. 18.3.2000, as the approved act of impersonation by her is not to be taken slightly in legal aspect. So she is not entitled to reinstatement in service or to any back wages. The concealment of appointment terms terminates the services in accordance the law accordingly and the management legally acted in accordance with the principles of natural justice as well. The very name of the person of two community, i.e. Aisha Bibi as Mohamenedam and Bhatni/Rohni Deswalin as Hindu can not be treated as alia one.

5. The further case of the Management in its rejoinder is that the BCCL was then not formed even on the alleged dated 16/17th Oct., 1971 of the take-over of the collieries by the Central Government. The question of promotion does not arise, as its date was informally withheld. She never brought to the notice of the Management her being as Aisha Bibi. The removal of the lady impersonating by the Management without any notice was quite legal, justified and unarbitrary, as no such notice is required in this case.

FINDING WITH REASONING

6. In this case, on consideration of the statements of MW1 Sekhar Sood, Sr. Manager (Personnel) MW2 Molay Kumar Chandra, Sr. Manager (Industrial Engineer), MW3 Hulash Baitha, the clerk (Spl. Grade) MW4 Akhilesh Kumar Chand, the Clerk, and MW5 Rathi Devi Security Guard for the management and WW1 Rohni Deswalin (w/o Sri Numu Shah), the lady workman herself and WW2 Nunu Shah, for the Union at the preliminary point about the fairness of the domestic enquiry the Tribunal held the enquiry as quite fair, proper and in accordance with the Law as per order dt. 28.02.2012. Hence, it came up for final argument on merit.

7. Mr Surendra Prasad, the Learned Union Representative for workwoman Rohini Deshwalin/Bhatni Deswalin submits that she continuously served for about 29½ years since her appointment firstly as Shale Picker on 17.10.1971, and thereafter but she illegally removed from the service as per letter dt. 18.3.2000 on the allegation of impersonation of Rohini Deshwalin W/o Kali Deshwalin without proper enquiry by the management, so she is entitled to full back wages and consequential benefits. He relied upon the four but filed three case laws as under:

“Since the petitioner continued on the post for more than nine years, equity demands that his services could not have been terminated on the ground that his appointment was not made after observing the provision of Articles 14 and 16 of the Constitution [2000(2) PLJR 627(SB), Abhay Kr. Pandey Vs. State of Bihar-para 5]; that ‘termination of petitioners’ service having been declared illegal and arbitrary, he cannot be denied benefits of wages for the period during which he was not allowed to join duty principle of ‘no work no pay’ would not apply to such cases [2010(3) JLJR 335(SB), Anil Kr. Singh V. Union of India-para 7& 8]; and that

Lastly it has been submitted by the Union Representative that Inordinate delay in issuance of charge Memo vitiates disciplinary proceeding, delinquent should not be made to suffer for mistake committed by Department [2005 4 AB.I.C. 4332 (SC)(DB) P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board].

8. Whereas Mr. U.K. Dubey, the Senior Manager (Pers) as the Representative for the Management submits that it is the admission of the present workman alleged Rohni Deswalin that the Form B Register mentions Kali Deshwalin as the husband of Rohni Deswalin (Ext. M. 3/1); and she had not stated in her statement (Ext. M. 3) in course of enquiry that Kali Deswalin was her husband whom or Akloo Deswalin son of Rohni Deswalin she did not know and she has not discharged the onus of proof about her identity of being Rohini Deswalin wife of Kali Deswalin, she has accepted that her former husband Parna Deshwalin died so she married to Nunu Sah (WW2), a muslim in the year

1978 or 1980; since the management found it on the verification report of the Supdt. of Police concerned that the present lady workman is actually Bhatni Deswalin W/o Parna Deshwalin who was working by impersonating Rohini Deshwalin at Bhatdee Colliery; as such as the provision under clause 28 of the Certified Standing Order, the Chairman-cum-Managing Director of the Company after being satisfied with aforesaid reason removed the present workman from the service of the Company in the interest of security; and accordingly the Competent Authority accorded her removal from her services impersonating Rohni Deswalin W/o Kali Deswalin which was communicated to her of her removal from the service w.e.f. 18.03.2000 as per the letter dated same of the Project Officer concerned (Ext. W.1); so the action of the management in removal of the present workwoman from the service was quite legal and justified.

9. After hearing the arguments of both the representatives of the parties concerned and on the scrutiny of the materials available on the case record, I find that none of the aforesaid case laws holds good with the present factum of the reference, moreover, the Union Representative has neither pleading nor proved any fact of inordinate delay in the department enquiry against the present workwoman. The case of the Union has not merit at all. Since this is purely a case of fraudulent employment by the present workwoman Bhatni Deswalin through impersonation of real workwoman Rohini Deswalin W/o Kali Deswalin, so removal of the present workwoman Smt. Rohini Deswalin/Bhatni Deswalin from the service by the management of M/s. B.C.C.L., Western Jharia Area is held to be quite legal and proper. The workman/(workwoman) concerned is not entitled to relief. Thus the reference is responded. Let the copy of the Award be sent to the Ministry, for Labour & Employment, Government of India for information and needful.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद, के पंचाट (आईडी संख्या 206/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.10.2012 को प्राप्त हुआ था।

[सं. एल-20012/201/2001-आई.आर.(सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 206/2001) of the

Central, Government Industrial Tribunal-cum-Labour Court, No. II Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22-10-2012.

[No. L-20012/201/2001-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 206 OF 2001

PARTIES: Employer in relation to the management of Govindpur Area No. III of M/s. BCCL and their workmen

APPEARANCES:

On behalf of the workman : Mr. N.G. Arun, Rep. of workman

On behalf of the employer : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 29th August, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/201/2001-IR(C-I) dated 11-7-2001.

SCHEDULE

“Whether the demand from the management of Govindpur Area No. III of M/s. BCCL for regularisation of Taleb Ansari as Magazine Clerk is legal and justified? If so, what relief the workman concerned is entitled to?”

2. Neither Union Representative N.G. Arun nor the workman Taleb Ansari appeared nor any witness for the evidence of the workman produced despite ample opportunity since 04-11-2005 pending for evidence of the workman for which several Regd. notices lately dtd. 8-11-2010, 18-2-2011, 28-3-2011 and lastly 29-11-2011 were issued to the Union concerned on its address noted in the Reference, yet not a single witness for the evidence of the workman produced on behalf of the Union concerned. Mr. D.K. Verma, the Ld. Advocate for the Management is present.

4214 GI/12-8

Perused the case record. It stands clear that the case has been pending for the evidence of the workman in this Reference related to his regularisation as Magazine Clerk for the last seven years. Despite several Regd. notices and ample opportunity for it, not a single witness for the evidence of the workman produced. The very conduct of the Union Representative as well as that of the workman in this case shows their disinterestedness to pursue it.

Under these circumstances, proceeding with the case for uncertainty is unwarranted. Hence, the case is closed and accordingly an order is passed as non existant Industrial Dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद, के पंचाट (आईडी संख्या 68/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल-20012/120/2002-आई.आर.(सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 68/2002) of the Central Government Industrial-cum-Labour Court, No. II, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22-10-2012.

[No. L-20012/120/2002-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 68 OF 2002

PARTIES: Employer in relation to the management of Katras Area of M/s. BCCL and their workmen

APPEARANCES:

On behalf of the workman : Mr. N.G. Arun, Rep. of workman.

On behalf of the employer : Mr. U.N. Lal, Ld. Advocate

State: Jharkhand Industry : Coal

Dated, Dhanbad, the 5th Sept., 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/120/2002-IR(C-I) dated 26-7-2002.

SCHEDULE

“Whether the action of the management of BCCL, Katras Project Area in not giving employment to Shri Etwa Lohar S/o Late Shankar Lohar on attaining the age of majority and not paying monetary compensation prior to that since the date of death of the workman is justified? If not to what relief is the concerned dependant of Shri Etwa Lohar entitled?”

2. Mr. N.G. Arun, the Union Representative and Mr. U.N. Lal, the Learned Advocate for the Management are present. Petitioner Etwa Lohar is not present for his evidence despite latest three Regd. notices to the Union concerned for it. The Union Representative has expressed no contact with the petitioner till now. The present Reference relates to an issue of employment of the petitioner as the son of Late Shankar Lohar on being his majority in age and for monetary compensation.

The perusal of the case record reveals the fact that the case has all along been pending for the evidence of the workman/petitioner since 13-09-2011, but the conduct of the petitioner appears to be not responsive to his cause, i.e., the unwilling to pursue the case. This is the oldest case of 2002. Hence, the case is closed and accordingly it is passed an order of no dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली 22 अक्टूबर, 2012

का.आ. 3410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद, के पंचाट (आईडी संख्या 102/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल-20012/32/2005-आई आर(सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 102/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22-10-2012.

[No. L-20012/32/2005-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD**

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 102 of 2005

PARTIES : Employer in relation to the management of Ghanoodih Colliery, Bastacolla Area of M/s. BCCL and their workman.

APPEARANCES:

On the behalf of the workman: None

On behalf of the Management: Mr. U.N. Lal, Ld., Advocate

State: Jharkhand

Industry : Coal

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/32/05/IR (C-I) dated 03-12-2005.

SCHEDULE

“Whether the action of the management of Ghanoodih Colliery of M/s. BCCL in fixing the pay of Sri Tej Pd. Nepali in the initial basic of Gr. H without protecting his previous pay at the time of his regularization from General Amador Category to Peon in Grade H is justified? If not, to what relief is the concerned workman entitled?”

2. None appeared for the Union/workman Tej Pd. Nepali nor any witness for the evidence of the workman produced despite last chance. Mr. U.N. Lal, the Learned Advocate for the Management is present.

On perusal of the case record, it stands clear that the case has been pending for the evidence of the workman since 8-12-2011 for which ample opportunities were

given and several Reg. notices issued to the Union concerned. The very conduct of the Union Representative and the workman shows their unwillingness to pursue the case related to his pay fixation without protection of his previous pay. Under the circumstances, the case is closed due to disinterestedness of the Union Representative as well as the workman. In result, an order is passed as non-existent of the Industrial Dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3411.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 68/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल.-20012/110/2007-आई.आर. (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 68/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22.10.2012

[No. L-20012/110/2007-IR (C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL

TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 68 OF 2007

PARTIES : Employer in relation to the management of Sijua Area of M/s BCCL and their workman.

APPEARANCES:

On behalf of the workman: None

On behalf of the employer: None

State: Jharkhand

Industry: Coal

Dated, Dhanbad, the 19th Sept., 2012.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act. 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/110/2007-IR(CM-I) dated 12-11-2007.

SCHEDULE

"Whether the action of the Management of Sendra Bansjora Colliery of M/s BCCL in dismissing the services of Shri Baldeo Bhuia, M/Loader, w.e.f. 16.11.2002 is justified and legal? If not, to what relief is the concerned workman entitled?"

2. None of the parties appeared nor any written statement filed on behalf on Union Representative of Dalit Mazdoor Sangh, Lal Dhora, Malkera, Dhanbad for the workman Baldeo Bhuia (M/Loader) despite several opportunities for it, for which Registered notices dt. 6-6-2008, 9-12-2010, 26-5-2011, 13-12-2011 and 18-06-2012 were issued.

From the persual of the case record, I find the Union Representative or any Representative for the Management never appeared right from the begining, i.e., since 19-03-2008. the very conduct of the Union Representative as well as that of the workman shows the fact of their unwillingness in pursuing the case. Under these circumstances, the case is closed and it is passed an order that no industrial dispute exists.

KISHORI RAM, Presiding Officer

नई दिल्ली 22 अक्टूबर, 2012

का.आ.3412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, के पंचाट (आई डी संख्या 176/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल.-20012/79/2001-आईआर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3412.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 176/2001) of the Central Government Industrial Tribunal-cum-Court No. II, Dhanbad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 22/10/2012.

[No. L-20012/79/2001-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL****TRIBUNAL (NO. 2), AT DHANBAD.****PRESENT**

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 176 OF 2001

PARTIES : Employer in relation to the management of Chanch Victoria Area of M/s BCCL and their workman.

APPEARANCES:

On behalf of the workman : None

On behalf of the employer : Mr. B.N. Pd., Ld. Advocate

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 13th Sept., 2012.

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act. 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/79/2001-C-I dated 22.5.2001.

SCHEDULE

"Whether the action of the management of C.V. Area of M/s BCCL in denying regularisation of Shri Chandan Singh as Asstt. Loading Inspector w.e.f. 1992 is fair and justified? If not, to what relief is the concerned workman entitled ?

2. None of the parties appeared nor the MW produced on behalf of the Management despite ample opportunity since 25.08.2006.

Perused the case record. It relates to denial of regularization of Shri Chandan Singh as Asstt. Loading Inspector since 1992. But the evidence of the workman was already closed as per order dt. 18.05.2006, as Mr. N. G. Arun, the Union Representative for the workman failed to produce any witness for the evidence of the workman despite ample opportunity for it since 29.4.2004. If the liability of the Union Representative is not properly discharged in the production of any witness for the workman in order to prove the schedule issue of the Reference, there is no need to examine any Management witness at this issue. Under these circumstances, the case is closed. In result, an order of no dispute is passed accordingly.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3413—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 8/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल.-20012/167/2005-आई.आर. (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No. 8/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s BCCL and their workman, which was received by the Central Government on 22.10.2012

[No. L-20012/167/2005-IR (C-I)]

AJEET KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.****PRESENT**

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 08 of 2006.

PARTIES: Employer in relation to the management of Sijua Area of M/s BCCL and their workman.

APPEARANCES:

On behalf of the workman: Mr. K.N. Singh, Ld. Adv.;

On behalf of the Management: Mr. D.K. Verma, Ld. Adv.;

State: Jharkhand Industry: Coal

Dated, Dhanbad, the 24th Sept. 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/167/2005-IR(C-I) dated 12-01-2006.

SCHEDULE

"Whether the demand of the Janta Mazdoor Sangh from the management of BCCL that Sh. Chhota Habib Mian,

M/Loader be regularized as Trammer is justified? If so, to what relief is the workman entitled and from what date?"

2. Mr. K.N. Singh, the Union Representative for workman Chhota Habib Mian, is present, but the workman did not appear for his evidence, because the workman is not interested in the case as submitted by Mr. Singh. Mr. D.K. Verma, the Learned Advocate for the Management is present.

From the perusal of the case record, I find that the case has been pending for the evidence of the workman since 2.4.2012 for which Regd. notices dt. 3.4.2012 and 03.08.2012 were issued to the Vice President of the Union concerned on its address noted in the Reference for it. But despite the ample opportunities and last chance for the evidence of the workman. not a single witness produced on behalf of the workman. This is a case of the demand of the Union for the regularization of the workman as Trammer, but the conduct of the workman indicates his unwillingness or disinterestedness to pursue his case. Hence the case is closed; and accordingly it is passed an award of no industrial dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ.3414.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 7/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल.-20012/12/2010-आई.आर. (सी एम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. 7/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, received by the Central Government on 22.10.2012

[No. L-20012/12/2010-IR (CM-I)]

AJEET KUMAR, Section Officer

4214 GI/12-9

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 07 OF 2011

PARTIES : Employer in relation to the management of Lodna Area of M/s. BCCL and their workman

APPEARANCES:

On behalf of the workman : None

On behalf of the Management : Mr. S.N. Ghosh, Ld.
Adv.

State: Jharkhand

Industry : Coal

Dated, Dhanbad, the 05th Sept., 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/12/10-IR (CM-I) dt. 18-02-2011.

SCHEDULE

"Whether the action of the management of Lodna Coke Plant of M/s. BCCL is not regularizing Sri Arjun Dusadh as Security Guard, though he fulfills all the criteria for regularisation as Security Guard, is fair and justified? To what relief the concerned workman is entitled?"

2. None appeared for the Union nor workman Arjun Dusadh appeared nor any written statement filed on behalf of the Union for the workman despite five Registered notices issued to the Union on its address as noted in the Reference. But Mr. S.N. Ghosh the Learned Advocate for the Management is present.

Pursued the case record. The present case as referred for adjudication relates to an issue for regularisation of workman Arjun Dusadh as Security Guard. It is also clear that the case has been abinitio pending for filing written statement on behalf of the Union for the workman or for the appearance for the Union concerned. Despite ample opportunity since 20.05.2011 for appearance as well as for filing W.S. of the workman. No written statement till now filed on behalf of the Union Representative or the workman.

It appears that the Union concerned or the workman is not willing to pursue the case for finality. Hence, the case is closed and accordingly it is passed an order of no dispute now.

KISHORI RAM, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2012

का.आ.3415—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 9/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल.-20012/166/2005-आईआर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No. 9/2006) of the Central Government Industrial Tribunal/Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s BCCL and their workman, which was received by the Central Government on 22-10-2012

[No. L-2012/166/12/2005-IR (C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 09 OF 2006

PARTIES : Employer in relation to the management of Sijua Area of M/s. BCCL and their workman

APPEARANCES :

On behalf of the workman : Mr. K.N. Singh, Union Rep.;

On behalf of the Management : Mr. D.K. Verma, the Ld. Adv.

State : Jharkhad Industry : Coal

Dated, Dhanbad, the 24th Sept., 2012

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this

Tribunal for adjudication vide their Order No. L-20012/166/2005-IR (C-I) dt. 12-01-2006.

SCHEDULE

“Whether the demand of the Janta Mazdoor Sangh from the management of BCCL that Sh. Ismail Mia, M/Loader be regularized as Trammer is justified? If so, to what relief is the workman entitled and from what date?”.

2. Mr. K.N. Singh, the Union Representative for the workman Ismail Mia is present but the workman did not appear for his evidence. Mr. Singh submits for the closure of the case, because of the fact that the workman is not interested in it, Mr. D.K. Verma, the Ld. Adv. for the Management is present.

The perusal of the case record reveals that the case has been pending since 02.04.2012 for the evidence of the workman, for which sufficient opportunities as well as the Regd. notices and last chance for it were given. Even then not a single witness for the evidence of the workman has been produced. The conduct of the workman shows the facts that he is not at all interested in pursuing the case of his regularisation. Therefore, the case is closed and accordingly an award of no longer industrial dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली 22 अक्टूबर, 2012

का. आ. 3416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिकी अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 119/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

अजीत कुमार, अनुभाग अधिकारी

[सं एल-20012/134/2003-आईआर (सी-1)]

New Delhi, the 22nd October, 2012

S.O. 3416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No 119/2003) of the Central Government Industrial Tribunal-Cum-Labour Court No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. TISCO and their workman, which was received by the Central Government on 22.10.2012.

[No. L-20012/134/2003-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) DHANBAD AT
DHANBAD.****PRESENT**

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

REFERENCE No. 119 of 2003

PARTIES : Employer in relation to the management of Jamadoba Colliery of M/s. Tisco and their workman.

APPEARANCES :

On behalf of the workman : Mr. C. Prasad, Ld. Advocate

On behalf of the employer : Mr. D.K. Verma, Ld. Advocate

State: Jharkhand Industry : Coal

Dated, Dhanbad, the 30th August, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/134/2003 -IR(C-I) dated 10-11-2003.

SCHEDULE

"KYA Rashtriya Mazdoor Union Ki TISCO Jamadoba Colliery Ke Prabandhantra se mang ke sri Gulab Prasad suputra solai ko unukampa aadhar par Niyukti dee jaya uchit evam nyayasangat hai Yadi han to Aabadak kis rahat ke patra hai?."

2. The case of petitioner Gulab Prasad son of Sri Solae as sponsored by the Union M.U. Hirapur, Telipara, Dhanbad is that his father having his C.M.P.F. No. C/158/779 and Personal No. 214080 had unblemished record of service at Digwadhi Colliery where he got injury during his working hour in the Mine, where he was sent and admitted to Tata Central Hospital on 23.12.1999 at 09.50 p.m. but on 26.12.1999 at 03.10. a.m., he died of the cardio respiratory failure due to cerebrovascular accident. His legal heir wife Smt. Jota Devi had applied for the employment of her son Gulab Prasad (the petitioner) on compassionate ground, as she was too unable to work in the Colliery for her chronic decease and old age. But the management neither provided a job nor replied to her letter. The petitioner also approached the management for a job in place of his deceased father. The Union raised the Industrial Dispute No. 1/101/2002-E.5 before the ALC(C) for conciliation in which firstly the

management displaced its calousness as per its letter Dt. Oct. 22/23, 2002 its inability to furnish its detailed comments for unfurnishing of the workmen's particulars by the Union. After long pursuance, the management as per its letter dt. March 24/25, 2003 represented that the TISCO being not a signatory to the N.C.W.A. VI is not bound by its provision, though it is following its own employment procedure, according to which an employee Dependant Register of an employee is kept for consideration for employment in case of vacancy and requirement, provided that the guardian employee has completed more than 30 (thirty) years of his service; as per its Employment procedure, an employee becomes eligible for enrolment of his dependant's name in the Employees Dependant Register after completion of 15 years of service.

3. Further case of the Union is that the Management has no cogent explanation for its being not signatory to the NCWA-VI despite its being in the Committee concerned and the participation of its representative therein nor any Certified Standing Order of the Company filed in its behalf. The Management has utterly violated the provisions of the Industrial Dispute Act, 1947, the Workmen's Compensation Act by not informing to the Commissioner concerned about the grave injury and death of the workman, and those of the Mines Act 1952 and its Rules 1955 by not informing of the workman's death to the Chief Inspector of the Mines (DGMS), Dhanbad, to deprive his legal heirs of their reliefs. The wife of the workman has also filed a gratuity case No. 36 (89)2003 under the payment of Gratuity Act against the Management before the ALC(C) and Controlling Authority for non payment of Gratuity. The workman was the sole earning member of his family consisting of wife, four sons and daughters all on the verge of starvation. Though the Social Security under its clause 9.5.0. lays down for the settlement of the matter of bipartite level, the Management as adamant to not seating with any Registered Union except the Recognised Union : Rastriya Colliery Mazdoor Sangh (RCMS), which functions as a pocket union of the Management. The Management has victimised the legal heir and representative of the deceased workman, malafide acted against the principle of natural justice.

4. Categorically denying the allegations of the Management, the Union has pleaded in its rejoinder that certainly the benefits out of the death of workman Solai in his service under the Management goes to his son as successor in interest. The registered union is legally competent to raise the Industrial Dispute on behalf of the workman or his successor as his service condition under the bye-laws and the Agreement. The employment one or two, applicable are given to the dependants of workman retiring on medical ground under P.M.E. of Mines Act or even on compassionate ground only after the completion of 15 and 30 years of his service as applicable as per the

provision and convention of the Organisation, but such employment procedure of employment is without certification of the Government Department under the Standing Order. The petitioner Gulab Prasad is unaware of it if his name was registered in the Employees Dependants Register or not. The management's refusal to sign on the N.C.W.A.II does not empower to act against direction/Law Rules of the Government. The appointment on compassionate ground is also a Welfare Scheme to be implemented by the Company at the time of harness of employee. So the management is bound to implement its procedure, thus to employ the dependant son of the workman after completion of 15 years service of the latter.

5. Whereas with specific denials, the contra pleaded case of the O.P./Management is that no employer-employee relationship existed between the Management of TISCO, Jamadoba and the applicant (Gulab Prasad) son of Late Solai, as Late Solai was an employee of Digwadih Colliery who expired on 26.12.99. It has no nexus between the death of the employee and his employment. The sponsoring Union being non-functional nor recognised in the establishment of the management has no locus standi to raise the industrial dispute, and to demand for employment of an outsider. There is no provision for employment to the dependant of an employee on compassionate ground. The NCWA-VI is not applicable to the management of TISCO, as the Management of it is not the signatory of NCWA-VI. M/s. TISCO is following its own employment procedure and as per the Employment Procedure of TISCO, a Registered Dependant of an employee is considered for employment in case of vacancy and requirement, if the guardian employee had completed more than 30 years of his service, then an employee becomes eligible to register his dependant's name in the Employees' Dependant Register after completion of his 15 years service. Since Late Solai had not enrolled the name of any of his dependant Gulab Prasad, so the latter (petitioner) is not entitled to get employment or any relief under the Management of TISCO as per the Employment Procedure of the Company. Thus the demand of the Union is neither legal nor justified.

6. Besides that, the management has pleaded in its rejoinder that Late Solai had not received any injury in course and out of employment. The sponsoring union has raised the false and frivolous industrial dispute, taking a flimsy ground of no opportunity for the employee to enroll his dependant name due to sudden death caused by the accident in course of employment.

FINDING WITH REASONING

7. In this reference case, WWI Gulab Prasad, the petitioner himself on behalf of the Union concerned, and MWI Dinesh Kumar Sharma, the Head Clerk, GM Office for the Management have been produced and examined.

The statement of petitioner Gulab Prasad (WWI) as the son of Late Workman Solae, is that his father, an employee of Digwadih Colliery of M/s. TISCO (Tata Steel Ltd.) served as an under ground Trammer from 01.04.1983 but in course of working, he succumbed to injury caused by cerebrovascular accident resulting in his cardio Respiratory failure in the Tata's Central Hospital, Jamadoba on 26.12.99 and thereafter his (Petitioner's) mother Jota Devi had applied for his employment on compassionate ground as per the employment procedure of the Company and NCWA VI but the management did not provide him employment on the ground that his deceased father (late workman) had not enrolled his (petitioner's) name in the Employees Dependant Register. The certificate of death of late workman Solai dt. 26.12.1999 issued by the Tata's Central Hospital, Jamadoba marked as Ext. W-1. But the petitioner (WWI) has failed to prove the alleged accident to his father in course of working, and his own parentage.

8. On the other hand, proving the procedure for employment of employee - wards at Jharia Group of Collieries, Internal Communication Form dt. 27th Nov., 1997 at Ext. M. 1, MWI Dinesh Kumar Sharma, the Head Clerk, at the G.M. Office has stated that the NCWA I to V were previously applicable upto 30th June, 1996, but the NCWA IV is not applicable to the TISCO Management, as aforesaid procedure for employment of employee-ward as per the Internal Communication Form (Ext. M. 1) was introduced, according to which the deceased workman had not got the names of his wife or the dependant son petitioner recorded in the Employees' Dependant Register after the completion of his fifteen years of his/Late workman's) service under the management, so the petitioner is not entitled to his employment as sought.

9. On the consideration of the materials of both the parties following the hearing of Mr. M.C. Prasad, and Mr. D.K. Verma, the Learned Advocate for the Union concerned and the management respectively, I find that though the petitioner has utterly failed to prove the alleged accident to his father in the Mine and the alleged application of his mother Smt. Jota Devi for his employment, it is an acknowledged fact that the Late workman Solai (Cat. I Mazdoor) expired on 26.12.1999 before his due retirement. Since the procedure of the Management does not provide for employment of the dependant the Late workman on compassionate ground : so the Reference is responded as such:

"that the demand of the Rashtriya Mazdoor Union from the management for the employment of Gulab Prasad (the petitioner) son of Late Solae (the workman) on compassionate ground is not proper and justified. However, in view of labour legislation the employee Award namely Petitioner Gulab Prasad has not to suffer for the negligence of his deceased

father in not getting his name enrolled in the Employees' Dependant Register on completion of his 15 years of service under the Management as per its procedure. Hence, the petitioner is entitled to get his name enrolled in the Employee Dependant Register as per the procedure of the Management for his employment as prescribed according to the procedure of the Management."

The Management is directed to enroll the name of the petitioner as the ward of Late workman Solace in the said register on account of his premature death before his retirement, within the period of one month from the date of receipt of the Award after its publication in the Gazette of India. Let a copy of the Award be sent to the Ministry of Labour & Employment, Government of India, New Delhi

for information and needful.

KISHORI RAM, Presiding Officer.

नई दिल्ली, 22 अक्टूबर, 2012

का.आ.3417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 79/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल-20012/26/2005-आई आर (सी-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2005) of the Central Government Industrial Tribunal No. II, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. CCL and their workman, which was received by the Central Government on 22-10-2012.

[No. L-20012/26/2005-IR(C-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

PRESENT:

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE No. 79 OF 2005

PARTIES : Employer in relation to the management of Hazaribagh Area of M/s. CCL and their workman.

APPEARANCES:

On behalf of the workman : Mr. D. Mukherjee, Ld. Adv.

On behalf of the Management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand

Industry : Coal

Dated, Dhanbad, the 6th Sept. 2012.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute on this Tribunal for adjudication vide their Order No. L-20012/26/05.IR(C-I) dated 26.7.2005.

SCHEDULE

"Whether the action of the management of Hazaribagh Area of M/s. CCL regarding reduction of paid holidays from 18 to 08 i.r.o. Md. Imanuddin and 42 other (as per list) workmen of the establishment of Area Finance Manager, Charchi, Hazaribagh is legal and justified? If not, to what relief are the concerned workmen entitled?

2. None appeared for the Union nor any of the workmen appeared nor any witness for their evidence produced despite last chance. Mr. D.K. Verma, the Learned Advocate for the Management is present.

From the perusal of the case record, it appears that the case has been pending for the evidence of the workmen since 23.1.2012 and despite the ample opportunity no witness produced for the evidence of the workmen. The conduct of the Union Representative as well as the workmen shows their disinterestedness to pursue the case. Therefore, the case is closed and accordingly, an order is passed as non-existent of industrial dispute now.

KISHORI RAM, Presiding Officer

Ref. No. 79/2005

List of Workmen

1. Md. Imauddin
2. P.R. Pradhan
3. C. Horo
4. T.N. Sahay
5. N. Khalkho
6. Sarju Prasad
7. J.L. Singh
8. Deoki Nandan
9. I.D. Thakur
10. R.K. Sinha

4214 GI/12-10

11. R.B. Mishra
12. P.B. Dey
13. Dinesh Prasad
14. B.A. Kumar
15. B. Ram
16. M.M. Mukherjee
17. J.K. Ram
18. R.L. Prajapati
19. Anant Prasad
20. R.B. Pandey
21. B.M. Saju
22. B.K. Mishra
23. S.K. Sinha
24. G.S. Mahto
25. K.D. Sahu
26. T. Saw
27. V.S. Prasad
28. H.C. Ram
29. Sadhan Sekhar
30. M.K. Singh
31. M. Devi Ganjhu
32. K.K. Mishra
33. D.K. Srivastva
34. D.K. Singh
35. R.C. Rajak
36. R.D. Gope
37. Ritan Mahto
38. Khemlal
39. Leela Devi
40. Parvati Devi
41. Mahesh Kumar
42. Nandlal Mahto
43. Remswarup Nonia

S. S. GUPTA, Secy.

नई दिल्ली, 22 अक्टूबर, 2012

का.आ. 3418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 107/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2012 को प्राप्त हुआ था।

[सं. एल-41012/10/2011-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 22nd October, 2012

S.O. 3418.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 107/2011) of the Central Government Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Northern Railway, and their workmen, received by the Central Government on 22-10-2012.

[No. L-41012/10/2011-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 107/2011

Ref. No. L-41012/10/2011-IR(B-I) dated: 04.07.2011

BETWEEN

Shri Kandhai Yadav

R/o Poore Birjor

Village and Post — Betawra

District — Rae Bareilly.

AND

Divisional Railway Manager

Northern Railway

Hazratganj

Lucknow.

AWARD

1. By Order No. L-41012/10/2011-IR(B-I) dated: 04.07.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Kandhai Yadav, R.o Poore Birjor, Village and Post — Betawra, District — Rae Bareilly and the Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW IN NOT GRANTING BENEFIT OF HIGHER PAY SCALE ACCORDING TO 5th CPC AT PAR WITH OTHER GOODS GUARDS TO SHRI KANDHAI YADAV, RETIRED GOODS GUARD, IS LEGAL AND JUSTIFIED ? TO WHAT RELIEF THE WORKMAN IS ENTITLED ?”

3. The order of reference was endorsed to the workman with direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10(B) of the Industrial Disputes (Central), 1957.

4. The order of reference was registered in the Tribunal on 18-07-2011 and the office was directed to issue registered notice to the workman for filing of statement of claim, accordingly, notice dated 27-07-2011 was issued to the workman; but no statement of claim together with documents etc. was filed. However, one Shri U.K. Bajpai, advocate filed his authority on behalf of the management 09-09-2011. Another notice was issued to the workman vide dated 21-09-2011 with direction to appear before this Tribunal and file statement of claim etc. on 08-11-2011; but the workman again failed either to appear or to file any statement of claim. Moreover, he moved adjournment, paper No. W-6 through his representative, seeking time to file the statement of claim and accordingly, 29-12-2011 was fixed for claim statement.

5. Since then, more than a year's time has passed, neither workman nor his authorized representative turned up before this court nor file any statement of claim nor sought time for the same. Even today the workman is absent. No application has been moved on behalf of him; accordingly, keeping in view the reluctance of the workman to contest his case the file is reserved for award.

6. In the instant case the burden was on the workman to set out the grounds to challenge the validity of the action of the management of Railways in not granting him higher pay scale according to 5th CPC at par with other Goods Guards is illegal and unjustified. The workman has not filed its statement of claim.

7. In the above circumstances, it appears that the workman does not want to pursue its claim on the basis of which it has raised the present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workman. Resultantly, no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

8. Award as above.

LUCKNOW. DR. MANJU NIGAM, Presiding Officer
09-10-2010.

नई दिल्ली, 23 अक्टूबर, 2012

का.आ. 3419.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 137/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 8/10/2012 को प्राप्त हुआ था।

[सं. एल.-12012/71/2007-आई.आर. (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd October, 2012

S.O. 3419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 137/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 8-10-2012

[No. L-12012/71/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,

BANGALORE

Dated: 10-09-2012

PRESENT:

Shri S.N. NAVALGUND,

PRESIDING OFFICER

C.R. No. 137/2007

I PARTY

Shri D. Srinivas,

C/o Shivalingaiah,

No. 11, 2nd Main Road,

Near Central Library,

Jagajeevan Ram Nagar,

Bangalore -560018

II PARTY

The Dy, General Manager,

Syndicate Bank,

Nodal Industrial Relations Cell,

No. 69, 9th Main, 3rd Block,

Jayanagar,

Bangalore - 560011

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12012/71/2007-IR(B-II) dated 08-10-2007 for adjudication on the following Schedule:

SCHEDULE

"Whether the punishment of compulsory retirement imposed on Shri D.Srinivas by the management of Syndicate Bank is legal and justified? If not, to what

relief the workman is entitled to?"

2. On receipt of the reference pursuant to the notices issued to both the sides they entered their appearances through their respective advocates and filed the claim statement and counter statement respectively. Having regard to certain allegations made in the claim statement filed by the first party regarding domestic enquiry a preliminary issue was raised as to 'whether the domestic enquiry conducted against the first party by the second party is fair and proper?'. When the matter was posted for evidence of second party on this issue and learned counsel appearing for the second party produced enquiry file, the union President of the first party union since submitted that he has no objection to exhibit these documents as well as about the fairness of the enquiry the enquiry file segregated into 14 in number were marked as EX.M1 to M14 and the preliminary issue was answered in the affirmative i.e. the Domestic Enquiry being fair proper. Then as requested by the first party union president the matter was posted for evidence of first party on victimisation and he filed the affidavit of the workman and examined him on oath as WW1. Thereafter when the matter was posted for arguments on merits the first party union President filed his written arguments, whereas, the learned advocate appearing for the second party addressed his oral arguments.

3. The brief facts leading to this reference and award may be stated as under:

Shri D. Srinivas (hereinafter referred as first party workman) who joined the services of Syndicate Bank (hereinafter referred as second party) as an Attender in the year 1984 while serving in that capacity at its Gavipuram extension branch Bangalore served with charge sheet dated 22-10-1999 as under:

Charge Sheet

It is alleged against you that, you are in the habit of absenting from duties without proper sanction of leave by the competent authority. You were chargesheeted and awarded with the punishments in the past, as detailed below:

- (1) Chargesheet-cum-Showcause Notice No.CGS/BNG/94/20 dated 04-02-94 and awarded the punishment of "warning" vide Proceedings No.PRS/BNG/DGM/94/33 dated 21-02-94.
- (2) Chargesheet-cum-Showcause Notice No.CGS/BNG/94/105 dated 10-12-94 and awarded the punishment of "warning" vide Proceedings No.PRS/BNG/DGM/95/11 dated 01-02-95
- (3) Chargesheet-cum-Showcause Notice No.CGS/BNG/95/83 dated 09-10-95 and awarded the punishment of "warning" vide Proceedings No.PRS/BNG/AGM/95/108 dated 06-12-95.

From	To	No. of days
(4) Chargesheet No. CGS/BNG/96/140 dated 12-12-96 and awarded the punishment of "Stoppage of next one increment for six months" vide Proceedings No.PRS(W)/BNG/DGM/97/73 dated 11-08-97.		

In spite of the above, there is no improvement in your attitude to attending the office and respect for leave rules. For instance, you absented from duties during the following periods unauthorisedly in violation of the leave rules of the Bank:

From	To	No. of days
(1)	(2)	(3)
18-12-96	20-12-96	2
26-12-96	28-12-96	3
11-03-97	12-03-97	2
26-03-97	-	1
09-04-97	-	1
19-04-97	-	1
30-04-97	-	1
02-05-97	-	1
21-05-97	22-05-97	2
28-05-97	29-05-97	2
20-06-97		1
27-06-97		1
10-09-97		1
17-09-97		1
23-09-97		1
26-09-97		1
15-10-97	16-10-97	2
22-10-97		1
24-10-97		1
29-10-97	02-11-97	5
17-11-97		1
21-11-97	25-11-97	5
30-04-98		1
05-05-98		1
21-05-98		1
27-05-98		1
12-06-98		1
16-06-98	23-06-98	8
26-06-98		1
01-07-98	03-07-98	3
10-07-98		1
18-07-98	19-07-98	2
25-07-98		1
29-07-98	01-08-98	4
06-08-98	07-08-98	2
09-08-98		1
16-08-98		1
19-08-98		1
22-08-98	23-08-98	2
27-08-98	06-09-98	11

(1)	(2)	(3)
11-09-98	12-09-98	2
17-09-98		1
04-10-98	08-10-98	5
29-10-98		1
25-11-98	29-11-98	5
18-12-98		1
26-12-98	27-12-98	2
03-12-98		1
10-12-98		1
07-08-99	08-08-99	2
13-08-99		1
17-08-99		1
20-08-99		1
22-08-99		1
29-08-99		1
01-09-99		1
07-09-99		1
09-09-99		1
14-09-99		1
16-09-99		1
22-09-99		1
25-09-99		1
28-09-99		1
01-10-99		1
07-10-99	08-10-99	2
		117

No.683/ZQB/PC/LS/GVP/655 dated 22-11-97 No.745/ZQB/PC/LS/GVP/655 dated 29-12-97 No ZQB/PC/LS/655 dated 10-10-98. No.489/ZQB/PC/LS/gvp/655 dated 28-10-98, No.524/ZQB/PC/LS/GVP/655 dated 18-11-98, No.666/ZQB/PC/LS/GVP/ dated 16-01-99, No.641/ZQB/PC/LS/GVP/655 dated 22-12-98, No.489/ZOB/PC/LS/GVP/655 dated 28-10-98 and Gavipuram Extension branch, Bangalore letter No.343/0439/RO/STF dated 25-08-99 and No.407/0439/STF dated 10-10-99, wherein your absence for the above period has been treated as unauthorised.

Your above action of absenting from duties without proper sanction of leave in violation of leave rules amounts to misconduct.

Your intermittent unauthorised absence as above, has affected the smooth functioning of the branch and customer service.

You are, therefore, charged with commission of Gross misconduct of "habitual doing of any act which amounts to Minor misconduct of Absence without leave and Irregular Attendance, vide Clause No.19.5(f) and doing acts prejudicial to the interest of the Bank", vide Clause No.19.5 (g) of the Bipartite Settlement.

You are required to offer your explanation to this Charge sheet within 10 days of its receipt by you failing which, the matter shall be proceeded further.

4214 GI/12-11

4. To this charge sheet the first party workman by his reply dated 5-11-1999 since submitted that his absence of 117 days mentioned in the charge sheet between 18-12-1996 to 8-10-1999 was as he was indisposed and he believe for each absence he submitted relevant medical certificate in support of his illness and however, every time his absence was treated as unauthorised and consequent to this the increment date was postponed besides affecting superannuation benefits thereby he has already been punished enough for the above said absence of 117 days as such the matter may be brought under clause 19.5 (j) of bipartite settlement viewing leniently to give him a fair opportunity to continue the service. The Disciplinary authority being not satisfied with this reply decided to hold the disciplinary enquiry and initiated disciplinary proceedings appointing Shri M.S. Dwaraganath as enquiry officer and Shri M.Umapathy, Dy.Chief Officer(P), Zonal Office, Bangalore as Management Representative. Then the enquiry officer securing the presence of the first party workman who appeared along with Shri U Abdul Jaleel, Secretary as Defence Representative after observing the required formalities of the preliminary enquiry receiving the evidence of Shri B. Rajagopal the branch manager of Gavipuram extension branch of the second party as MWI and exhibiting copy of letter dated 16-01-1997 of personnel cell, leave section addressed to the first party; copy of letter dated 24-04-1997 of personal cell addressed to the first party; copy of letter dated 16-06-1997 of personnel cell addressed to the first party; copy of letter dated 27-06-1997 of personnel cell, leave section, Zonal office, Bangalore addressed to the first party; copy of letter dated 3-12-1997 of personnel cell, leave section, ZO, Bangalore addressed to the first party; copy of letter dated 22-11-1997 of personnel cell, leave section addressed to first party; (Copy of letter dated 29-12-1997 of personnel cell, leave section addressed to the first party; copy of letter dated 10-10-1998 of personnel cell, leave section addressed to first party; copy of letter dated 28-10-98 of personnel Cell, Leave Section addressed to first party; copy of letter dated 13-1-98 of Personnel cell, leave Section addressed to first party; copy of letter dated 22-12-98 of personnel Cell addressed to the first party; copy letter dated 16-01-1999 of Personnel Cell addressed to first party; copy of letter dated 25-08-1999 of Gavipuram Extension branch, Bangalore addressed to first party; copy of letter dated 10-10-1999 of Gavipuram Extension branch addressed to the first party; copy of charge sheet cum show cause notice dated 4-02-1994 issued to the first party; copy of proceedings dated 21-02-1994 issued to first party; copy of charge sheet cum show cause notice dated 10-12,1994 issued to the first party; copy of proceedings dated 1-02-1995 issued to the first party; copy of charge sheet cum show cause notice dated 9-10-1995 issued to the first party; copy of proceedings dated 6-12-1995 issued to first party; copy of charge sheet dated 12-12-1996 issued to first party and copy of proceedings dated 11-08-1997 issued to first party as MEX1 to MEX22 called upon the first party

workman to give his evidence if any by himself or through witnesses and the first party workman submitting that he has no witness to examine made his oral submission to the effect that his absence for 117 days between 18-12-1996 to 8-10-1999 being an accumulated figure over a period of 3 years was due to circumstances beyond his control and as he had no leave to his credit and already his date of increment was postponed, for the period of absence he has been sufficiently punished as such the same should be viewed leniently as a onetime amnesty and he may be permitted to continue in service, Then the enquiry officer hearing the defence representative and the management representative by his report dated 22-10-1999 held the charges being proved conclusively. Disciplinary authority while serving the copy of the enquiry report and giving a personal hearing passed the impugned order of compulsory retirement and when same came to be confirmed by the Appellate Authority and aggrieved by the same the first party union raised the dispute before the ALC(C), Bangalore as the same failed it resulted in this reference.

5. In the written argument filed by the first party union president it is submitted the workman covered in this reference since hails from a poor schedule Caste family and due to untimely death of his wife in the year 1995 and other family difficulties he could not attend to the duties and as admitted by MW1 all his absences were supported by certificates issued by the registered medical practitioner and that in spite of it his absence was held as unauthorised as such already he had been sufficiently punished the management ought to have viewed the absence leniently and allowed him to continue in service with some minor penalties. *Inter alia* the learned advocate appearing for the second party urged that since there is no dispute as to the fact of absence as contained in the charge sheet no medical evidence being produced to substantiate that he was suffering from any illness and moreover he intermittently remained absent for 117 days without applying for leave as required by the rules the disciplinary authority has rightly imposed the punishment of compulsory retirement and there is no reason to interfere either in the finding of the enquiry officer or the punishment imposed by the disciplinary authority confirmed by the Appellate Authority.

6. Since it is not in dispute that the first party workman remained absent for a period of 117 days as mentioned in the charge sheet intermittently between 18-12-1996 to 8-10-1999 and his subsequent applications for all those days being treated as unauthorised absence, that for his absence from 18-12-1996 to 20-12-1996 and from 26-12-1996 to 28-12-1996 he submitted leave applications dated 21-12-1996 and 29-12-1996 respectively on 7-1-1997 and for his absence for six days in April and May 1997 he never submitted leave application and again for his absence from 28-05-1997 to 29-05-1997 he submitted leave application only on

15-06-1997 i.e. after a period of two weeks and did not submit any application for his absence of 6 days in April, May 1997, for two days in June 1997, for 6 days in November 1997 and he submitted 14 leave applications all dated 3-10-1998 at a stretch requesting for leave for 20 days. Thus it is clear that he was highly irregular in attending the duty and in spite of three earlier warnings and one punishment of stoppage of next one increment for 6 months, he did not mend his attitude and attend his duties regularly. Even assuming that he had some family difficulties to attend the duties in all these days after exhausting all his extraordinary leave and other leave to his credit it do suggest that his family problem may be such that he cannot attend to his duties of the bank which definitely affects the functioning of the bank. Therefore, absolutely I find no reason to interfere in the punishment imposed by the Disciplinary Authority invoking clause 19.5 (j) of the Bipartite

Settlement of Compulsory Retirement. Under the circumstances there being no reason to either interfere in the finding of the enquiry officer or punishment imposed by the disciplinary authority and confirmed by the Appellate Authority, I pass the following:

ORDER

The reference is rejected holding that the punishment of compulsory retirement imposed on Shri D Srinivas by the management of Syndicate Bank is legal and justified and he is not entitled for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 10.09.2012)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2012

का.आ. 3420.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच/अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बंगलौर के पंचाट (संदर्भ संख्या 19/2001 एवं 60/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 8/10/2012 को प्राप्त हुआ था।

[सं. एल.-12011/257/2000-आई.आर. (बी-11),

सं. एल.-12011/74/2001-आई.आर. (बी-11)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd October, 2012

S.O. 3420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 the Central Government hereby publishes the award (Ref. No. 19/2001 & 60/2001) of the Central Government Industrial Tribunal/Labour Court BANGALORE now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of VIJAYA BANK and their workman, which was received by the Central Government on 8-10-2012

[No. L-12011/257/2000-IR (B-II),
No. L-12011/74/2001-IR (B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT

"SHRAM SADAN,"
III MAIN, III CROSS, II PHASE, TUMKUR ROAD,
YESHWANTHPUR,

BANGALORE-560 022

Dated 18-09-2012

PRESENT

Shri S.N. NAVALGUND,
PRESIDING OFFICER

C.R. No. 19/2001

&

CR. No. 60/2001

I PARTY

The Regional Secretary
Vijaya Bank Workers
Organisation,
Puttur Region,
PUTTUR - 574201
KARNATAKA STATE

II PARTY

The Regional Manager,
Vijaya Bank, Regional Office,
Puttur Region,
PUTTUR 574201
KARNATAKA STATE

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred these disputes vide order Nos. L-12011/257/2000-IR(BII) dated 12-02-2001 & L-12011/74/2001-IR(B-II) dated 27-07-2001 for adjudication on the following Schedule:

SCHEDULE (CR NO. 19/2001)

"Whether the action of the management of Vijaya Bank, Regional Office, Puttur, is justified in refusing to pay 3/4th of the scale wages with proportionate annual increments as per the bipartite settlement dated 12-10-1970 to Shri Lancy Clifford Pereira, temporary part-time Sweeper, Bellare Branch? If not, what relief the said workman is entitled to?"

SCHEDULE (CR NO. 60/2001)

"Whether the action of the management of Vijaya Bank, Regional Office, Puttur, in terminating Shri Lancy Clifford Pereira, temporary-part time Sweeper, Vijaya Bank, Bellare Branch is justified? If not, what relief Shri Lancy Clifford Pereira is entitled to?"

2. The Central Government since made these two references pertaining to Shri Lancy Clifford Pereira, temporary part time sweeper at Bellare Branch of the Vijaya Bank on failure of the dispute raised by the Regional Secretary, Vijaya Bank Workers Organisation, Puttur region and many of the facts and considerations are common and common arguments have been addressed by the learned advocates appearing for the parties after independently leading evidence, for the sake of convenience I have taken up to pass a common award on these two references.

3. In both the matters pursuant to the notices issued by this tribunal both sides who have entered their appearances through their respective advocates filed their Claim Statement and Counter Statement separately.

4. In the claim statement filed in Cr No. 19/2001 dated 29-04-2004 it is alleged Shri Lancy Clifford Pereira (herein after referred as first party workman joined the services of the second party at its Bellart branch as part time sweeper which situated in a rural area and its bank premises measures 1709 sq.ft and that he was working for 5 hours daily and is (covered under the Bipartite settlement being the member of the first party union. It is further alleged that as per the provisions of Bipartite settlement entered between the Indian Bank Association and All India Bank Employees Association the salary stipulated being as under :

- Part-time workman shall be entitled to graduate incremental pay scale related to their working hours as follows:
- Part time workmen who are member of the subordinate staff shall be paid more than 19 hours to 29 hours. 3/4th of the scale wages with proportionate annual increments.

He is entitle to the relief as per the order of reference.

It is also alleged Shri Lancy Clifford Pereira though worked continuously for a period of 5 hours every day he is entitle for scale wages with proportionate annual increments but as same was not paid and on his request though the first party union requested the management to extend the said benefit the management since did not care they raised the dispute before the ALC and as it failed the central government made this reference. With these assertions in the claim statement it is prayed to (direct the second party management to pay benefits as referred in the order of reference along with interest by answering the point of dispute in favour of the first party workman. Inter-alia in

the counter statement filed for the second party on 10-08-2004 it is contended the service conditions of the award staff in its bank are governed by Sastry Award as modified by Desai award and subsequent Bipartite settlements entered into at the industry level Between IBA representing the managements of member banks and all India trade union of bank employees. The first bipartite settlement 1966 contained provisions for engagement of temporary employees and paragraph 20.5 of the Desai Award and clause 4.5 of the Bipartite Settlements 19-10-1966 dealt with payment of wages to part time employees and the above mentioned provisions were superceded by virtue of paragraph 9 of the Bipartite Settlement dated 12-10-1970. Thereafter another Bipartite settlement dated 10-4-1989 was entered into between the managements of 54 A Class banks represented by IBA and their workmen represented by All India Trade Unions and clause 18 of the said settlement contains the codified service conditions of part-time employees with modifications as are considered necessary and Clause(g) of the same reads as under :

“The settlement reached as aforesaid amended, modified and superceded the provisions of the awards and the settlements referred to in the following Clauses 1 & 2 of the settlement ”.

“The settlement dated 12-10-1970 is mentioned in clause 1. Therefore, the provisions contained in the settlement dated 12-10-1970 stood amended/modified from the date of coming into force of the settlement dated 10-4-1989”.

Thereafter another settlement between the above mentioned parties was entered into on 14-02-1995 wherein no reference is made to the payment of wages to the part-time employees. Thereafter one more settlement was entered into between the above parties on 28-11-1997 enhancing the consolidated wages payable to part-time employees. Thereafter VII Bipartite Settlement dated 27-03-2000 came into effect giving effect from 1-11-1997 and Clause 20 of the above Bipartite Settlement reads as under :

“In partial modification of Clause 1 of the Bipartite Settlement dated 28-11-1997, w.e.f. 1st November 1997, part time employees whose normal working hours per week as given below shall be paid consolidated wages as under :

- | | |
|---|--|
| (a) Up to 3 hours | At Bank's discretion with a minimum of Rs.450 per month. |
| (b) More than 3 hours but less than hours | At the Bank's discretion with minimum of Rs.740 per month. |

It is further contended the workman of the first-party union is since engaged as a temporary part time sweeper on consolidated wages w.e.f. 1-07-1997 and his engagement as a temporary part-time sweeper was made when Bipartite Settlement dated 14-02-1995 and Bipartite Settlement dated

27-03-2000 were in force his consolidated wages were fixed at Rs.440 per month as per the provisions of the Bipartite Settlement dated 14-02-1995 which was in force. Therefore, the claim made in this reference based on the provisions contained in the Bipartite Settlement dated 12-10-1970 is not legal. It is further contended as he was engaged for less than 6 hours per week he was entitled for consolidated wages of Rs. 740 only which has been paid to him and at no point of time he was engaged as a permanent workman as alleged and the claim made based on the provisions of the Bipartite settlement dated 12-10-1970 are unsustainable. Thus it is contended the first party workman who was engaged as a temporary part-time sweeper has been paid consolidated wages whenever he was engaged and there is no violation of the terms of the settlement. It is also contended as per the decision of the Hon'ble Supreme Court of India in State of Orissa & Others Vs. Balaram Sahu & Others reported in 2002 Lab IC 3558 the temporary, ad hoc, daily wager or casual workers like NMRs are not entitled for equal pay of the regularly employed permanent staff in establishments and the court has observed though equal pay for equal work is considered to be a concomitant of Article 14 as much as equal pay for equal work will also be a negation of that right, equal pay would depend upon not only the nature of volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference. Therefore, the first party workman from any angle is not entitle for the wages other than consolidated wages as per the Bipartite Settlement applicable for the relevant period. Thus it has prayed for rejection of the reference.

5. In the claim statement filed by the first party association in CR No.60/2001 it is asserted that its workman Shri Lancy Clifford Pereira who was working since 1-01-1992 at Vijaya Bank Rural Development Foundation, Mangalore at its Puttur office on a consolidated wage I worked there till 30-06-1997 which was sponsored by the second party management with a view to ameliorate rural masses and to take the banking industries to rural areas. On 30-06-1997 the branch manager after getting the permission from the regional manager he was engaged as a part-time sweeper on consolidated salary of Rs.400 per month as per the circular No.31/93 and Head Office circular 48/93. It is further alleged the nature of the work discharged by him is permanent in nature as such as per bipartite settlement and according to clause 20.7 which reads as under:

“In supersession of Paragraph 21.20 and sub clause(c) of paragraph 23.15 of the Desai Award, Temporary employee will mean, a workman who has been appointed for a limited period for work which is essentially temporary nature or who is employed temporarily as an additional workman in connection with temporary increase in work of a permanent nature and includes a workman other than a

permanent workman who is appointed in a temporary vacancy caused by the absence of a particular permanent workman”.

Temporary employee will be appointed only for a limited period for work which is essentially temporary nature or employed temporarily as an additional workman in connection with the temporary increase in work of a permanent nature and the temporary vacancy has caused by the absence of a particular permanent workman and in the instant case none of the aforesaid clause is applicable because he was appointed for a permanent vacancy and permanent availability of work as the cleaning has to be done every day. It is further alleged that on 22-11-2000 the second party management arbitrarily terminated his services without assigning any reason and appointed one Kushala B Gouri Hole as part-time Sweeper in his place though in the meantime he had requested to regularize his services therefore, it amounts to retrenchment as defined under Section 2(oo) of the Industrial Dispute Act and without compliance of the provisions of Section 25F of the Industrial Dispute Act as he had completed 240 days of service by that time. Thus it is prayed to answer the point of dispute in favour of its workman setting aside the order of termination and direct the second party to reinstate him in his original post and pay him consequential benefits as if he is not terminated from service. In the counter statement filed by the second party in CR No.60/2001 on 16-06-2004 while reiterating the same contention taken in CR No. 19/2001 in respect of the appointment of the first party workman as a temporary part-time sweeper on consolidated wages from 1-7-1997 in terms of para 4.5(b) of the Bipartite settlement his working hours per week did not exceed 6 hours, further contended since it (second party) was nationalized on 15-04-1980 by virtue of banking companies(Acquisition & transfer of undertaking) Act, 1980 subsequent to nationalization of the bank, govt. of India issued recruitment rules and guidelines relating to reservation policy and as per the rules formulated by the Govt. of India the recruitment to the post of subordinate category has to be made through the medium of employment exchange and complying with the reservation policy even for temporary engagement of persons against temporary vacancies/casual vacancies as first party workman was engaged as temporary part-time sweeper without complying with the said rules, reservation policy without being sponsored by employment exchange he cannot claim permanent employment in the bank as of right and since the bank as per the rules appointed Kushala B. Gouri Hole and posted her to report at Bellare branch on 22-11-2000, the temporary service of the first party workman came to be terminated who was appointed as a stop gap measure. It is also contended as on 1-07-1997 when the first party was initially engaged at Bellare branch he was more than 32 years of age and was also not sponsored by the local employment exchange as such he was not eligible

for appointment in the regular service of the bank and in that regard the first party association which had raised an Industrial Dispute for his non absorption before the AEG, Mangalore withdrew the same on 17-10-2000 and thereafter come up with this dispute. Thus it is contended service of the first party workman engaged as temporary sweeper came to an end when the regular workman reported for duty as such there is no victimization as alleged by the first party and that he is not entitle for any relief as asked for.

6. When the matter was posted for evidence, on behalf of the Second party in CR No.19/2001 examining Shri Lakshminarayana Bhat N, Branch Manager as MW1 got marked voucher for payment of consolidated salary under the head general charges for the month of April dated 30-04-1998; voucher for payment of consolidated salary under the head general charges for the month of July dated 31-07-1998; voucher for payment of consolidated salary under the head general charges for the month of October dated 2-11-1998; voucher for payment of consolidated salary under the head general charges for the month of December dated 31-12-1992; voucher for payment of consolidated salary under the head general charges for the month of January dated 1-02-1999; voucher for payment of consolidated salary under the head general charges for the month of March dated 30-03-1999; voucher for payment of consolidated salary under the head general charges for the month of December dated 31-12-1999; voucher for payment of consolidated salary under the head general charges for the month of March dated 30-03-2000; voucher for payment of consolidated salary under the head general charges for 22 days dated 22-12-2000; voucher for payment of consolidated salary arrears from 1-11-97 to 31-07-2000 for a sum of Rs.9,900 calculation sheet of period and wages paid to the first party workman from 1-11-97 to 31-09-2000; copy of the letter by first party workman to the Regional Manager, Vijaya Bank, Puttur dated 10-01-2000; copy of the appointment order issued to Shri Kushala B dated 22-11-2000; attested true copy of the lease agreement between K.Subraya Prabhu and Vijaya Bank; extract of clause 4.5 of Bipartite settlement dated 19-10-1996; extract of clause 9 of bipartite settlement dated 12-10-1970; extract of clause 18 of Bipartite settlement dated 10-04-1989; circular from the head office with reference to the settlement dated 28-11-1997 Between Indian Bank association with workmen All India Bank Employees Association and extract of clause 20 of Bipartite settlement dated 27-03-2000 as Ex. M1 to M19. Inter alia on behalf of the first party while filing the affidavit of first party and examining him on oath as WW1 did not produce any documents.

Similarly in CR NO.60/2001 the first party while filing his affidavit examining him as WW1 got marked letter dated 15-01-2001 issued by the first party; copy of the letter dated 9-09-1997 issued by the Branch Manager, Vijaya Bank regarding appointment of permanent part time sweepers;

4214 GI/12-12

copy of the letter addressed to the Branch Manager, Bellare dated 30-06-1997 by the Regional Manager; copy of the letter dated 27-06-1997 addressed to the Regional Manager regarding requirement of permanent sweeper at the branch by the Branch Manager; copy of the data issued by the Branch Manager, Bellare branch and letter dated 27-03-1998 addressed to the Regional Manager by the branch manager, Bellary Branch as Ex. W1 to W6 and on behalf of the second party Shri Lakshminarayana Bhat, Branch Manager is examined as MW1 and got marked letter addressed to the branch manager, Bellare from Regional Office, Puttur dated 10-08-2000; letter addressed to Regional office, Puttur by the branch manger, Bellare dated 14,08-2000; calculation sheet of consolidated wages paid to Lancy Clifford Periera; letter addressed to Regional Office, Puttur from Bellare branch dated 7,02,2001; order of appointment of Mr. Kushala B; Lease agreement; Letter addressed to Regional Office by the first party dated 10-01-2000 as Ex., M1 to M7.

7. With the above pleadings, oral and documentary evidence brought on record by both the sides when the matter was posted for arguments the learned advocates appearing for both sides addressed arguments. The learned advocates appearing for both sides addressed their common arguments. The learned advocate appearing for the first party as far as reference in CR No.19/2001 is concerned just argued that post of sweeper being recognized post under Bipartite Settlement, first party is entitle for 3/4th of the salary of that post. Inter alia the learned advocate appearing for the second party while drawing my attention to clause 9 of the Bipartite Settlement copy of which is got marked as Ex.M16 urged that since the first party workman was engaged as part-time temporary sweeper and his work was not more than 6 hours per week as such as provided under Sub Clause (b) to Clause 9 of the Bipartite Settlement he was only entitled for consolidated wages and accordingly having regard to the hours of work he was expected to do he had agree to work as part-time Sweeper on consolidated wages of Rs.440 and since subsequently the same was raised to Rs.770 per month while calculating the difference arrears being paid to him at the rate of Rs.770 per month as evidenced by Ex.M11 his reference covered in CR NO.19/2001 is liable to be rejected.

8. Since the work of sweeper would be before the commencement of the bank, having regard to the carpet area of the building of the bank as evidenced by Ex.M14 being 1799 sq.ft its sweeping would not have required more than an hour, therefore, the contention of the first party workman that he was to work for 5 to 6 hours per day is unacceptable in the absence of any evidence to corroborate his self version. Therefore, as urged on behalf of the second party having regard to the area of the bank premises the first party workman must have agreed to work as part-time

sweeper on a consolidated wages of Rs.440 then existing rate for the part-time workman to work for less than six hours a week. Therefore his claim that his work was more than 9 hours per week for which 3/4th of the scale wages with increment is attracted is unacceptable. Under the circumstances I am of the considered view the action of the management of Vijaya Bank, regional office Puttur is justified in refusing to pay 3/4th of the scale wages with proportionate annual increment as per Bipartite settlement dated 12-10-1970 to the first party as he was engaged as a temporary part-time sweeper at Bellare Branch w.e.f.1-09-1997 and he is not entitle for any relief.

9. Now coming to the second reference covered in CR.No.60/2001 regarding the termination of first party workman from service, his learned advocate urged that since it is an admitted fact that first party workman worked as part-time sweeper continuously from 1-11-97 to 30-09-2001 for which as per Ex.M1 the difference of wages to the extent of Rs.9900 have been paid to him, he having worked more than 240 days in each calendar year the provisions of Section 25 F are attracted and as no one month notice or wages in lieu of the notice or the retrenchment compensation is paid to him his termination amounts to illegal retrenchment, but however, having regard to the circumstances of the case on hand instead of ordering for restoration of his job and to pay back wages the management/second party may be directed to pay reasonable monetary compensation. In support of his argument he cited the decision reported in (2009)2 SCC(L&S)309 & (2009)2 SCC(L&S)513. Inter alia the learned advocate appearing for the second party while citing the decisions reported in 2005(5)SCC 122,2006 AIR SCW 1991 & 2006 AIR SCW 5994 urged the first party was admittedly being employed as part-time sweeper on consolidated wages he has no right to seek regularization or restoration of his services or back wages. But he failed to highlight how the management could escape its liability contemplated under Section 25F of the Industrial Dispute Act.

10. Section 25F of I. D Act places certain conditions precedent to retrenchment of workman. According to this section no workman employed in any industry who has been in continuous service or not less than one year under an employer shall be retrenched by that employer until he has been given one month notice in writing indicating reasons for retrenchment and the period of notice as expired or he has been paid in lieu of such notice wages for the period of notice; and also compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or in part thereof in excess of six months.

11. Admittedly in the instant case the first party workman has continuously worked as part-time sweeper from 1-11-1997 to 30-09-2000 for a period of 2 years 9 months in respect of

which as per Ex.M11 he who had been paid consolidated wages of Rs.440 per month by revising it at the rate of Rs. 770 per month has been paid with arrears. Thus it is on record as per the records of the second party itself he has worked as part time sweeper continuously for a period of 2 years and 9 months. Therefore, the provisions of Section 25F do attract in the present case and if at all the second party wanted to terminate his services because a newly recruited workman posted to that post the bank ought to have given him wages in lieu of one month notice and also 15 days average pay for a period of 3 years. In the absence of the compliance of this mandatory provision, the order of retrenchment would be illegal and it would be taken as if there is no such order at all and in such a case such a retrenchment cannot be given effect to at all in any manner whatsoever. But in view of the facts of the case on hand after this first party workman was appointed as part time sweeper the bank appointed the regular part time sweeper as per rules and posted to work at Bellare branch the first party workman could not have been continued but for failure to comply the mandatory requirement of Section 25F of the Industrial Dispute Act his retrenchment becomes in operative, but, at the same time as there was no scope to continue his job, as laid down by the Hon'ble Supreme Court in the case of Sr. Superintendent Telegraph (traffic) Bhopal Vs. Santhosh Kumar Seal & Others reported in 2010(2)SC Cases (L&S) 309 & (2010)6 SCC 773 relied by the learned advocate appearing for the first party, Relief of reinstatement/restoration of job and back wages cannot be said to be justified and instead monetary compensation would serve the ends of justice. In the present case having regard to the period of work done by the first party workman to the extent of 2 years 9 months and the consolidated wages he was entitled to, I feel it just and appropriate to award compensation of Rs.25000 to the first party workman for violation of the mandatory provisions of Section 25F of the Industrial Dispute Act by the management/second party. In the result I pass the following Award.

AWARD

The reference in CR No.19/2001 is rejected, whereas, the reference in CR No.60/2001 is partly allowed directing the second party to pay the first party workman compensation of Rs. 25000 in lieu of relief of reinstatement and back wages for violation and contravention of the mandatory provisions of Section 25F of the Industrial Dispute Act. Under the circumstances the parties are directed to bear their own costs. The payment so ordered shall be made within one month from the date of notification of the award failing which same shall carry interest at the rate of 9 percent per annum.

(Dictated to PA transcribed by her corrected and signed by me on 18-09-2012).

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2012

का.आ. 3421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओरियन्टल बैंक ऑफ कॉमर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय बंगलौर के पंचाट (संदर्भ संख्या 10/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 08.10.2012 को प्राप्त हुआ था।

[सं. एल-12015/1/2006-आईआर(बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 23rd October, 2012

S.O. 3421.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 the Central Government hereby publishes the award (Ref. 10/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Bank Of Commerce and their workman, which was received by the Central Government on 08-10-2012.

[No. L-12015/1/2006-IR(B-II)]
SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 17-09-2012

PRESENT

Shri S.N. NAVALGUND Presiding Officer

C.R.No. 10/2008

I Party

II Party

Shri D. Varman,

The Chief Manager,

S/o Dhanakoti, 36,

Oriental Bank of Commerce,

Chakravarthy Lay Out,

No. 26, HJC Chambers,

2nd Main, 3rd Cross,

Richmond Road,

Palace Cross Road,

Bangalore.

Bangalore 560020

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and Sub section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12015/1/2006-IR(B-II) dated 13-02-2008 for adjudication on the following Schedule:

SCHEDULE

Whether the action of the management of Oriental Bank of Commerce in terminating the services of Shri D. Varman, Temporary Peon/sub staff w.e.f. 6-09-1997 is legal and justified" If not, to what relief the concerned workman is entitled?"

2. While registering the reference in CR No. 10/2008 on the file of this court notices were issued to both the parties and they entered their appearances through their respective advocates and filed claim statement and counter statement. In the claim statement filed by the first party he claim that he was appointed as sub staff by the second party bank during March 1993 on temporary basis and that from there onwards continuously he worked till 6-09-1997 on which day he was refused work. He further asserting that he having worked for more than 240 days continuously refusing him work from 6-09-1997 without complying the provisions of Section 25B (it appears it ought to have been 25F and mentioning as 25B a typographical error) amounts to illegal retrenchment as defined under Section 2(oo) of the Industrial Dispute Act. Thus he has prayed to direct the second party to reinstate him into service with continuity of service, full back wages and all other consequential benefits. In the counter statement filed for the second party while denying that he has worked continuously from March 1993 till 6-09-1997 contended since he has not worked for more than 240 days continuously in any calendar year and intermittently his services were availed on daily wages on need basis, therefore, there is no illegal retrenchment as claimed by him and there was no need to comply the provisions of Section 25F of the Industrial Dispute Act.

3. After completion of the pleadings the first party in order to substantiate his claim while filing his affidavit examining himself as WW1 subjected for cross examination for the second party counsel. Inter alia on behalf of the second party while filing the affidavit of Assistant General Manager, Shri Jagat Kaushik examining him on oath as MW1 legal notice of the first party dated 16-09-1997; reply to legal notice of the second party dated 24-10-1997; Order passed in Writ Petition No. 12763/1998 dated 8-06-1998; office copy of objection filed before conciliation office and Regional Labour Commissioner dated 13-02-2001 and attendance register maintained by the second party from September 1993 to October 1995 were got marked as Ex. M1 to M5. After close of the evidence when the matter was posted for arguments the learned advocate appearing for the first party urged first party workman having worked more than 240 days in a calendar year and second party has failed to rebut his version by producing attendance register and vouchers towards payment made to him which are expected to be with the second party the first party has proved his case and is entitle for reliefs. Inter alia the learned advocate appearing for the second party urged that the

burden of proving that the first party worked continuously for a period of 240 days in a calendar year being on him and in respect of daily wages no attendance registers are maintained as such the first party is not entitle for any relief.

4. On appreciation of the pleadings and evidence brought on record by both the sides I have arrived at the conclusion of rejecting the reference for the following reasons:

REASONS

5. Admittedly there is no letter of appointment in favour of the first party and he has worked on daily wage basis claims that he continuously worked as an attender from March 1993 till 6-09-97 in respect of his claim that he continuously worked from March 1993 till 6-09-97 the date on which allegedly refused work except his self swearing statement on evidence is placed on record. In order to attract the provisions of Section 25F where a workman works continuously for a period of 240 days in a calendar year the employer is required to give one month notice in writing indicating the reasons for retrenchment or pay in lieu of such notice and also compensation equivalent to 15 days average pay for every completed year of continuous service. In case the provisions of Section 25F are not complied with it can be taken that his service is continued as the order of retrenchment would be illegal. In order to claim the benefit of Section 25F of the Industrial Dispute Act it is incumbent on the part of the workman to demonstrate to prove that in the preceding year of his termination he worked continuously for a period of 240 days and he cannot rely on the weakness of the employer. In the case on hand the first party workman having miserably failed to demonstrate/prove that he worked continuously for a period of 240 days preceding the alleged date of his termination of service the provisions of Section 25F are not attracted and it cannot be said that refusing to give him work from 6-09-1997 is illegal retrenchment. Under the circumstances there is no substance in the claim of the first party and the reference is liable to be rejected. In the result I pass the following award.

AWARD

Ther reference is rejected holding that the action of the management of Oriental Bank of Commerce in terminating the services of Shri D. Varman, Temporary Peon/sub staff w.e.f. 6-09-1997 is justified and that he is not entitle for any relief

(Dictated to PA transcribed by her corrected and signed by me on 17-09-2012)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ. 3422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जे.एन.वी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जयपुर के पंचाट (आईडी संख्या 08/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-42012/36/2005-आईआर(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the management of Jawahar Navodaya Vidyalaya and their workmen, received by the Central Government on 25-10-2012.

[No. L-42012/36/2005-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer : Sh. N.K. Purohit

I.D. 8/2006

Reference No. L-42012/36/2005-IR(CM-II)

dated : 1-12-2005

Shri Rajendra Meghwal
S/o Shri Kanwar Lal
Through Joint Secretary
H.M.S, Bengali Colony Chhawani, Kota (Raj.)
V/s

The Principal

Jawahar Navodaya Vidyalaya

Atru, Distt: Baran, Rajasthan-325218

Present:

For the applicant union: Sh. Kapil Sharma

For the Non-applicant: Sh.V.S.Gurjar

AWARD

24-9-2012

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2 (A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:—

4214 GI/12-13

"Whether the action of the Principal, Jawahar Navodaya Vidyalaya, Atru, Dist. Baran-325218 (Raj.) in terminating the services of Sh. Rajendra Meghwal S/o Sh. Kanwar Lal w.e.f. 20-11-2003 is legal and justified? If not, to what relief the workman is entitled to?"

2. The workman in his claim statement has pleaded that he was employed by the non-applicant as daily wager helper on 1-7-98. Despite he had worked continuously during period 1-7-98 to 19-11-03 & had worked for more than 240 days during said period, the non-applicant has terminated his services on 20-11-03 without assigning any reason. Thus, his termination amounts to retrenchment u/s 2(oo) of the I.D.Act. He has further pleaded that no notice or pay in lieu of notice and compensation was given to him, therefore, his termination is in violation of Section 25-F of the I.D.Act. The workman has alleged that at the time of his termination, juniors to him viz. Ramkaran, Rambabu, Pawan Sharma, Omprakash, Manohar, Bhuribai, Bharosibai were in the job. Therefore, his termination was also in violation of Section 25-G of the I.D.Act. He has further alleged that no seniority list was prepared before terminating his services & new hands were given recruitments without affording any opportunity of re-employment to him, therefore, the non-applicant has also violated the provisions of Section 25-H of the I.D.Act. The workman has prayed to reinstate him with back wages & all consequential benefits.

3. In reply, while denying the claim of the workman, the non-applicant has averred that the workman was allowed to work as daily wager worker for mess work on the basis of application submitted by him on 26-10-03. He was allowed to work up to 30-4-04 only. His appointment was for a specific period and on fixed amount. The non-applicant has also averred that the workman remained absent without any information on 17-11-03 & 18-11-03. He submitted an application on 19-11-03 stating therein that he would not repeat such mistakes. Thereafter, he remained absent on 20-11-03. An opportunity was provided to him vide letter dated 5-12-03 to resume his duties within three days from the receipt of the letter but the workman did not turn up. The non-applicant has averred that the workman did not work for more than 240 days, therefore, provisions of Section 25-F are not attracted. Since, the workman was employed for a particular period, his termination does not amount to retrenchment in view of the provisions u/s 2(oo) (bb) of the I.D.Act.

4. The non-applicant has also averred that the persons said to be junior to the workman were not the employees of the non-applicant. They were employees of contractor, therefore, provisions of Section 25-G are also not attracted. The non-applicant has also raised preliminary objections regarding maintainability of the claim of the workman on the ground that non-applicant is not an 'industry' within the meaning of 2(j) of the I.D.Act.

5. In rejoinder, the workman has only reiterated his earlier averments made in the claim statement.

6. In evidence, the workman has filed his affidavit whereas the non-applicant has filed the counter affidavit of Shri Pep Singh Rajawat, Principal, JNV, Atru.

7. In documentary evidence, the workman has filed documents Ex. W-1 to Ex. W-4 pertaining to conciliation proceedings before the ALC (C), Kota. The non-applicant has also filed documents Ex. M-1 to Ex. M-4 in support of their case.

8. In view of the pleadings of both the sides, the following questions crop-up for consideration:—

- i. Whether the workman had worked during period 1-7-98 to 19-11-03 as daily wager helper and whose services have been terminated on 20-11-03 in violation of Section 25-F of the I.D. Act?
- ii. Whether at the time of terminating services of the workman persons junior to him were retained in violation of Section 25-G of the I.D. Act?
- iii. Whether fresh hands were given recruitment after terminating services of the workman without affording opportunity of re-employment to him in violation of Section 25-H of the I.D. Act?
- iv. Whether the non-applicant establishment is an 'industry' u/s 2(j) of the I.D. Act?
- v. To what relief the workman is entitled to?

Point No. I

9. The workman has deposed that despite he had worked continuously as daily wager helper during period 1-7-98 to 19-11-03 and had worked for more than 240 days; his services have been terminated on 20-11-03 without assigning any reason and without any notice.

10. The management witness has denied that the workman had worked for more than 240 days. He has stated that the workman was appointed on 26-10-2003 for a specific period and he was allowed to work as daily wager helper for mess work up to 30-04-2004 but he remained absent on 17-11-03, 18-11-03. Thereafter, on 19-11-03 he submitted an application Ex-M-2 stating therein that in future he would not repeat such mistake but on next date *i.e.* 20-11-03 he did not turn up. Vide letter dated 5-12-03 he was asked to join duty within three days. Thereafter, reminder dated 16-1-03 (Ex. M-3) was also given but he did not resume duty.

11. The learned representative for the workman submits that admittedly the workman has worked as daily wager helper in the mess of the non applicant. The workman has stated in his affidavit that he has worked during period 1-07-98 to 20-11-03. The non applicant has not produced any record to show that the workman had not worked during

said period. The workman has denied his signature on Ex. M-1 and Ex. M-2 and has also denied that he had received letters Ex. M-3 and Ex. M-4. He further contends that on the basis of the evidence adduced by the workman it is established that he had worked during said period and had worked for more than 240 days. Therefore, his termination was in violation of Sec. 25 (f) of the I.D. Act.

12. Per contra, the learned representative for the non-applicant has said that it is evident from the document Ex. M-1 that the workman was engaged on 26-10-03 for a fixed period up to 30-04-04 only on a fixed amount, therefore, as per provisions of Section 2(oo)(bb), his termination does not amount to retrenchment. Further, the workman himself did not turn up from 20-11-03. From documents Ex. M-3 and Ex. M-4, it reveals that despite opportunity provided to the workman to resume his duty he did not turn up. The workman has not produced any documents to show that he had worked prior to 26-10-03.

13. I have given my thoughtful consideration to the rival submissions from both the sides.

14. Initial burden was on the workman to prove that he had worked continuously for 1 year without any interruption or he had worked for at least 240 days during preceding 12 months from the date of his termination *i.e.* 30-11-03.

15. The workman has produced his affidavit & documents Ex. W-1 to Ex. W-5 in support of his claim. Ex. W-1 is a copy of application dated 30-12-03 submitted before ALC (Kota) and Ex. W-2 is reply of the non applicant submitted in respect of said application. Ex. W-3 is the copy of the rejoinder submitted by the workman and Ex. W-4 is counter reply in respect of the rejoinder. Ex. W-5 is failure report of the ALC dated 10-02-05. The record produced by the workman is pertaining to conciliation proceedings before ALC (C), Kota. Except his own statement, the workman has not adduced any other evidence to establish that he had worked for more than 240 days during preceding 12 months from the date of his alleged termination.

16. The case of the non applicant is that the workman was engaged as daily wager for a specific period *i.e.* 26-10-03 to 30-04-04 but he himself did not turn up from 20-11-03. Further, since he was employed for a fix period as per Section 2 (oo) (bb) of the I.D. Act his termination does not amount to retrenchment. In this regard decision rendered in (2006) 13 SSC 15 has been relied on.

17. Non applicant has produced copy of an application said to be made by the applicant addressed to the principal dated 26-10-03. Upon perusal of the said application it reveals that the workman made request to engage him at the mess of the non applicant on 26-10-03 and on the said application an order was passed to engage him as daily wager for mess work. His appointment was for period

26-10-03 to 30-04-04 and the workman has accepted the terms of the employment. The non-applicant has also produced copy of application dated 19-11-03 Ex. M-2 and according to non-applicant the said application was submitted by the workman regarding his absence during period 17-11-03 to 18-11-03. Ex-M-3 is copy of letter dated 18-11-03 addressed to the workman whereby he was asked to join duty and Ex. M-4 is reminder dated 5-12-03 in this regard.

18. The management witness Shri Pep Singh has stated that Ex. M 1 to Ex. M4 are documents of the school. The workman in his cross examination has stated that application dated 26-10-03 was not submitted by him. He has denied his signature on the said application. He has also stated that application dated 19-11-03 Ex. M2 to the principal was not submitted by him and he has denied his signature on the said application. He has also denied that letters dated 18-11-03 and 5-12-03 Ex. M4 and Ex. M5 respectively were received by him.

19. The workman himself has produced copy of the application dated 30-12-03 addressed to ALC (Kota) Ex. W1 but in his cross examination he has denied that said application was submitted by him. He has denied his signature on the application submitted by him. Reply of the non applicant dated 3-03-04 Ex. W2 has also been submitted by the workman and Ex. W3 is rejoinder submitted by him in respect of said reply but he has stated that the said reply Ex. W2 was never made available to him. Thus, he has denied his signature even on the documents submitted and relied upon by him. Further, his signature on documents Ex. M1 and Ex. M2 resembles with the signatures on the documents submitted by him. In view of above, his statement that Ex. M 1 application was not given by him is not trustworthy.

20. Upon perusal of the documents Ex. M 1 to Ex. M4 it is evident that workman was engaged on 26-10-03 as daily wager and had worked upto 19-11-03 only. The workman has not produced any documentary evidence to establish that he had worked during period 1-07-98 to 25-10-03. Since, he did not call for any record for the said period from non-applicant, no adverse inference can be drawn against non-applicant for not producing documents for the said period. On the basis of his own affidavit it is not established that he had worked during said period. Even if his contention that he himself did not left the job and his serves were terminated on 20-11-03 is accepted, the workman has failed to establish that prior to his alleged termination on 20-11-03 he had worked at least 240 days during preceding 12 months. Therefore, provisions of Section 25-F of the I.D.Act are not attracted and resultantly this point is decided against the workman.

Point No. II

21. The workman has stated that at the time of his termination workmen S / Sh. Ramkaran, Rambabu, Pawan Sharma, Omprakash Manohar and Smt. Bhuribai and Smt. Bharosibai etc. who were junior to him were in the employment of the non applicant.

22. The management witness Shri Pep Singh Principal has stated that the persons said to be junior to the workman were not the employees of the non-applicant. They were the employees of the contractor and their services were provided by the contractor for casual work.

23. Since the non-applicant has denied that junior persons to the workman were employees of non applicant, burden was on the workman to establish that the persons junior to him were employees of non applicant and they were in employment of the non-applicant at the time of the alleged termination on 20-11-03. Except his bald statement in his own affidavit there is nothing on record to substantiate his statement. Therefore, workman has failed to establish any violation of Section 25 (G) of the I.D.Act.

Point No. III

24. The workman has pleaded that after termination of his services new hands were recruited by the non-applicant without affording any opportunity of re-employment to him.

25. To attract the provisions of Section 25 (H), the retrenchment of workman should be from the same category service from establishment in which fresh hands have been recruited. Neither in the statement of claim nor in his affidavit the workman has disclosed names of the persons allegedly recruited by the non-applicant in violation of Section 25-H of the I.D.Act. He has not adduced any evidence to substantiate his statement in this regard. Further, the workman has not adduced any evidence to establish that fresh hands were recruited in the same category in which he was working with the non-applicant. Thus, the workman has also failed to establish the alleged violation of provisions of Section 25-H of the I.D.Act.

Point No. IV

26. The learned representative for the non-applicant school contends that the JNV does not fall within the definition of Section 2 (j) of the Act and the vidyalaya being an educational institute, it is not commercial establishment. Countering it, the learned representative on behalf of the workman submits that as per legal proposition laid down in Bangalore Water Supply case, the vidyalaya is also an 'industry' within the meaning of 2 (j) of the Act. In Bangalore Water Supply case reported in 1978 LLJ 349 (SC) the Hon'ble Apex court has observed and concluded that an educational institution is an industry in accordance with the parameters laid down by the Court. The relevant observation usefully quoted as below: —

“The final ground accepted by the Court is that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man

without a mission is spiritually still-born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission even if true is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of industry are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion."

27. The observation made by the Hon'ble Apex Court lends support to the submission advanced on behalf of the workman and it is held that the non-applicant institution is an 'industry' as defined under Section 2 (j) of the Act. This point, therefore, is decided in favour of the workman.

Point No. V

28. In view of the conclusions drawn in respect of point nos. I, II and III, the workman has failed to establish any violation of the provisions of Section 25-F, 25-G and 25-H of the I.D. Act by the non-applicant. Thus, the workman is not entitled to any relief.

29. Accordingly, it is held that the action of the non-applicant in terminating the services of the workman from 20.11.2003 is justified and legal. Resultantly, the workman is not entitled to any relief. The reference under adjudication is answered accordingly.

30. Award as above.

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ. 3423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायलय, कानपुर के पंचाट (संदर्भ संख्या 52/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/131/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/06) of the Central Government Industrial Tribunal-cum-labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 25-10-2012.

[No. L-22012/131/2005-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

Industrial Dispute No. 52 of 06

Between—

Sri Hazimaseetullah,
Son of late Mastu Mohd. Sahukara,
Bilaspur,
District Rampur.

And

District Manager,
Food Corporation of India,
Moradabad U.P.
Moradabad.

AWARD

1. Central Government MoI, New Delhi, vide notification No. L-22012/131/2005-IR (CM-II) dated 31-07-2006, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of Food Corporation of India, on imposing the penalty of dismissal on Sri Hazimaseetullah, with effect from 05-01-04 on the charges of misconduct leveled against him vide charge sheet dated 18-11-2002 is legal and justified? If not to what relief the concerned workman is entitled to?

3. Brief facts are—

4. It is stated that the claimant was engaged/employee as a labor mate in the year 1972, under the contract labour system with the opposite party. In the year 1986, the contract system was abolished and the claimant became as a regular employee of the opposite party on the post of Sardar under DPS System. Thereafter he was continuously working under the opposite party. On 16-10-2000, he fell ill and he sent an information on vide annexure-1, thereafter he continuously sent the intimation vide annexures 2-38. Thereafter the opposite party issued him a letter demanding his explanation vide letter dated 4-05-02 which was replied by him on 18-05-02. Thereafter he used to sent the intimation of his illness vide registered post, copy of which is filed as annexure 39-40.

5. This is an admitted fact that thereafter the opposite party again sent a letter dated 6/8 July, 2002, wherein it was directed that the claimant should produce himself before the CMO District Hospital Rampur and obtain a certificate of his illness.

6. On which the claimant appeared before the CMO, but the CMO stated that they can only issue a certificate of fitness but of illness.

7. It is also an admitted fact that the opposite party, thereafter issued a charge sheet dated 2-8-02 which was replied by the claimant vide letter dated 9-9-02. It is also admitted that the opposite party cancelled the previous charge sheet and issued another charge sheet under Model Standing Order vide letter dated 18-11-02. It is alleged that the opposite party did not disclose the reason for the cancellation of the first charge sheet. Claimant sent several letters asking the opposite party to explain the reason for the cancellation of the charge sheet but they did not reply. Thereafter the claimant was informed of the appointment of the enquiry officer and claimant was asked to appear and participate in the inquiry. He appeared before the inquiry officer, he again sought the reasons and record which was not made available to him as was desired by him.

8. It is alleged that on 13-08-03, the claimant was directed to put the signature and he was orally informed that the domestic inquiry has been concluded whereas his application was not disposed off till that date. During this period the opposite party did not produced any relevant documents before him. He was also not permitted to produce his defense. No witness was produced during the inquiry by the opposite party therefore, the domestic inquiry conducted by the opposite party is against the principles of nature justice and the inquiry officer has acted on the advice of the management as an agent of the employer.

9. Thereafter the inquiry officer sent his inquiry findings along with annexure vide letter dated 20-10-03, along with 14 documents, whereas no such document was produced before him. Claimant sent the reply to the inquiry officer but it was not replied, thereafter management issued a letter in the nature of show cause notice showing him that he has been found guilty under the Standing Order of Industrial Employment (Central) Rules, 1946 vide section 13/3 and other sections. This show cause notice was replied by the workman, but the management ignoring the real facts has terminated his Services vide letter dated 05-01-04. Thereafter claimant moved an application by registered post to the opposite party but it was not replied.

10. It is alleged that the rule under certified standing order are applicable on the workman and not under Model Standing Orders.

11. It is also alleged that he had been an active worker of the union so number of writs were filed by the workers union during this period the opposite party had pressurized him to withdraw petitions and when the writ petition were not withdrawn the opposite party threatened to bear the consequence and due to this the opposite party has acted malafide and terminated his services.

12. Therefore he has prayed that the order of termination be declared invalid and he should be reinstated in service with all consequential benefits.

13. Opposite party has filed the written statement. It is alleged that the workman had been absent since 14-10-2000 from his duty. His application paper no. 26/4 dated 27-10-2000 was received in the office wherein the claimant had stated that he had been suffering since 16-10-2000. Thereafter he sent another application on 25-11-2000 along with medical certificate dated 18-11-2000. Thereafter the opposite party issued a letter to the claimant dated 4-5-02 asking to explain the reasons. Before this another letter dated 30-04-02 was also issued upon which the claimant replied vide letter dated 18-05-02. Thereafter the claimant also sent another letter dated 21-5-02 along with a medical certificate. Finding that there is no reason for his absence the opposite party decided to issue a charge sheet. The claimant replied this charge sheet. At the initial stage the opposite party had issued a charge sheet under the Certified Standing Orders which was letter on cancelled and another charge sheet under Industrial Employment (Standing Orders) Central Rules 1946, was issued. This copy was sent to the claimant. It is alleged that the second charge sheet issued to the claimant was self explanatory and contain entire facts. it is stated that the claimant was not himself taking any interest in the conduct of the domestic inquiry but was applying delaying tactics.

14. He was given full opportunity to defend his case. Management did not acted malafidely in appointing the inquiry officer or the inquiry officer did not act under the influence of the management, therefore the management followed the principles of natural justice in conducting the domestic inquiry.

15. The claimant has not shown any reason or satisfactory explanation for his long absence from duty, so after the inquiry then the management was satisfied with the report of the inquiry officer the disciplinary authority issued him a show cause notice and thereafter passed the termination order. After a long time the claimant instead of filing any appeal had moved a representation which was beyond the power of the disciplinary authority to consider his representation. Instead of availing the departmental remedy moved a dispute before the ALC and which was referred to this tribunal.

16. It is also stated that during his absence it is alleged to his illness the claimant has been actively involved in the union activities as also admitted by him, therefore, he is not entitled for any relief and the claim petition is liable to be dismissed.

17. Claimant has filed the documents along with claim statement in the shape of annexure which are from 1—60.

18. Opposite party has also filed the documents serialing no. 1 to 30 vide list 9/1-2. They have also filed 3 documents which are paper number 26/3-5. they have also filed the inquiry proceedings and the report of the inquiry officer in original.

19. Both the parties have adduced oral evidence.

4214 GI/12-14

20. I have examined the oral as well documentary evidence thoroughly.

21. First of all in the given circumstances I would like to see whether a proper domestic inquiry has been conducted by the opposite party or not as alleged by the claimant that no proper inquiry has been conducted.

22. It is contended that even no witness has been produced during the inquiry by presenting officer. I have gone through the inquiry report. This contention of the claimant is having a force; therefore, in my view also no proper inquiry can be conducted unless some witness of facts or record is produced before the inquiry officer. The Presenting officer or the inquiry officer cannot take the cognizance of record unless there is a statement to that effect and an opportunity is given to the opposite party to cross such witness. This is a fact that such type of procedure has not been followed in the present case by the inquiry officer. Even the inquiry officer did not appear before tribunal to explain the circumstances.

23. So considering the facts and circumstances of the case I am of the view that a proper and fair inquiry was not conducted and inquiry has been found vitiated.

24. In this case the opposite party has also been given an opportunity to produce the evidence and to establish the charges and to prove and establish the charges against the claimant before the tribunal and these opportunities were given to both the parties to establish their respective cases before the tribunal.

25. Opposite party has adduced Sri Amrit Lal Shethy who is the Regional Manager in Food Corporation of India who has stated on oath who has stated that he is well versed with the facts of the case and record of the case. He stated that the claimant has been absent from his duties since 14-10-2000. His first application was received which is dated 27-10-2000 where in it is alleged that the claimant is suffering from seasonal fever from 16-10-2000 and he will join the duty whenever he will be fit. There was no medical certificate along with this application. He sent another application dated 25-11-2000 alleging that he is suffering with effect from 17-10-2000 and he will join the duty whenever he will be fit. There is a medical certificate along with this application dated 18-11-2000 which is paper no. 26/3.

26. This certificate does not bear of the stamp of any doctor and also that it is not on the letter Pad of any doctor. The illness shown is dysentery and viral fever.

27. It is stated that none of these letters show that how many days of leave is required by the claimant. It is contended that the claimant has alleged to have written several letters and photocopies of those letters have been filed on the record of the file though all such letters have never been received. For a moment if I take the cognizance of these applications, none of the applications is specific. In none of these applications it is not at all clear as in which

form the applicant is claiming his leave due to him under service rules.

28. In the end the claimant has filed his reply vide letter dated 21-5-02 along with a medical certificate and these papers are 9/13-14. I have also gone through this medical certificate. It appears to me that it is in a very rough state. It is written public nursing home but there is no address of such nursing home. It is also not on letter head of a doctor. It also state that the claimant has been under his treatment from 17-10-2000, whereas another certificate filed by the claimant himself which is paper no. 9/8 which is of another doctor name not known as per above document who has also shown that the claimant was under his treatment from 17-10-2000 which absolutely appears to be contradictory and it can hardly be believed that a patient on the same date how can be under the treatment of two doctors as per own documents filed by the claimant himself.

29. It is contend by the authorized representative for the opposite party that the claimant has not denied his long absence from duty. The long absence was for a valid reason, to prove this fact the burden was on the claimant and the claimant has not discharged his burden even before the tribunal. I find force in the contention of the opposite party.

30. The claimant did not adduce such evidence which could be acceptable that he was absenting from his duties with effect from 14-10-2000 due to some serious illness and he was under treatment under a recognized doctor.

31. In his evidence as W.W.1 he did not whispered even a single word regarding his single illness or the treatment which was received by him on the recommendations of the treating doctors. Further the document filed by the claimant had also not been proved by summoning the doctors before the tribunal therefore they are in the eye of the tribunal not to be a documents to be accepted as a piece of evidence.

32. On the basis of above it is concluded that the claimant has failed to prove his case by adducing leading and convincing evidence that his absence from duty was authorized and that he has been removed from the services of the opposite party illegally.

33. On the contrary it has been found by the tribunal on the basis of above discussion that the management has not acted arbitrary or acted in an illegal manner while awarding the punishment of dismissal to the workman from the service of the management.

34. Not but the least it may be pointed out here that there was one more contention of the claimant that he was governed by certified standing order for his misconduct and not by Industrial Employment (Standing Order) Central Rules 1946. M.W.1 in his statement on oath has specifically stated that the claimant was governed under industrial Employment (Standing Orders) Central Rules 1946, and the claimant has not confronted witness on this point. Therefore, there is no force on this contention of the claimant on this point.

35. Therefore the reference is answered against the workman and in favour of the management holding that the workman is not entitled to any relief pursuant to the present reference.

RAM PARKASH, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ. 3424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 2/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/49/2009-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3424.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Ananta OCP of MCL, and their workman, received by the Central Government on 25-10-2012.

[No. L-22012/49/2009-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 2/2010

Date of Passing Award-27th September, 2012

Between:

The Project Officer,
Ananta OCP of MCL,
South Balanda, Distt. Angul.

... 1st Party-Management.

(And)

Their Workman represented through the General Secretary, Talcher Koila Khani Mazdoor Sangh, At. Jumde Bhavan, P.O. South Balanda, Distt. Angul-759116.

... 2nd Party-Union.

Appearances:

Shri Rajat Kr. Senapati, ... For the 1st Party-
Auth. Rep. Management.

Shri Mohan Nayak, ... For the 2nd Party-
EC member and State Union.
Secretary.

AWARD

A reference under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act has been sent to this Tribunal vide letter No. L-22012/49/2009-IR (CM-II), dated 21-01-2010 for adjudication of an industrial dispute existing between the management of Ananta OCP of MCL and their workman with regard to the following matter:—

“Whether the action of the management for M/s. MCL for not giving protection in Category-V (Drill Operator) to Shri Padmanav Biswal w.e.f. 14-02-2007 after he met with an accident and allowed to join in duties on recovery is legal and justified? To what relief the claimant entitled for?”

2. The 2nd Party-Union representing the case of the workman has stated in its statement of claim that the workman joined as Category-I mazdoor on 16-1-1996 in Ananta OCP of Jagannath area of MCL. Subsequently he was promoted from Cableman Grade-E to the post of Drill Operator (Tr.) vide office order dated 27-11-2004 and placed to the post of Drill Operator Category-V vide office order dated 9-8-2006 as per recommendation of D.P.C. He had been discharging his duties sincerely from the date of joining. On 26-2-2006 while working in the mines he suddenly met with an accident and was immediately hospitalized at Nehru Satabdi Central Hospital located at Talcher. Being serious he was referred to S.C.B. Medical College and Hospital, Cuttack. During treatment, below the knee portion of his right leg was amputated and he was kept on injury on duty (IOD) from 26-2-2006 to 13-2-2007 by the management. After treatment the medical board of the management-company declared him fit to join the duty and he joined his duty on 14-2-2007. But before joining, the Project Officer of Ananta OCP issued an office order dated 18-1-2007 demoting him from his original cadre of Category-V to Category-I without any notice under section 9-A of the Industrial Disputes Act which is totally illegal and unjustified. The workman represented against it, but the office order remained as it is. This resulted in heavy financial losses to the workman. Therefore he raised an industrial dispute before the Assistant Labour Commissioner (Central), Bhubaneswar, but having failed the present reference came up before this Tribunal. A prayer has been made to declare the action of the management demoting the workman from the post of Category-V to Category-I mazdoor as illegal and unjustified and direct the management to pay

differential arrear wages revised from time to time as per NCWA.

3. The 1st Party-Management filed written statement denying all the allegations of the Union. It has stated that due to accident during the duty hour permanent disability of 50% was caused to the workman. For the period of his treatment (IOD) he was paid full wages which he was getting immediately before the date of accident. An amount of Rs. 2,36,472 was also paid as compensation to him. Since the workman was found 50% disable after accident, the PPD board recommended him for "alternative Job". A proposal was accordingly sent from Ananta OCP to Area Office to decide the nature of job to be given as alternative job to the workman and accordingly he was placed to work as Mazdoor, Category-I at Civil Maintenance Office, Ananta Vihar Colony with full protection of his pay. Since the loss of earning capacity has been compensated, the workman has to work in a reduced capacity commensurate with his capacity and skill, if he is not found fit for original job. However, the 1st Party-Management on compassionate and humanitarian consideration protected his last pay with annual increment at the rate 3% of the basic salary as per NCWA-VIII. As such there has not been done any injustice to the workman and the action taken by the management is legally justified. The office dated 18-1-2007 has no effect to the workman as to his salary/wages.

4. In its rejoinder the 2nd Party-Union has stated that the workman was authorized to operate drill/dozer in the mines of the 1st Party-Management as per office order dated 27-11-2004 on recommendation of the selection committee being promoted for the post of Cableman Grade-E to the post of Drill Operator (Tr.). Further he was placed in the post of Drill operator, Category-V vide office order dated 9-8-2006. His original job was to operate drill and he completed two years as Drill Operator Category-V. So his wages should be fixed in Grade-D excavation cadre as Drill Operator. As the wages are not fixed properly and he was demoted to reduced category he had to suffer heavy financial losses.

4. Following issues were framed on the pleadings of the parties:—

ISSUES

1. Whether the action of the Management of M/s. MCL for not giving protection in Category-V (Drill Operator) to Shri Padmanav Biswal w.e.f. 14-02-2007 after he met with an accident and allowed to join in duties on recovery is legal and justified?

2. To what relief the claimant entitled for?

5. The 2nd Party-Union has examined the disputant workman Shri Padmanav Biswal as W.W.-1 and filed three documents marked as Ext.-1 to Ext.-3 in support its claim.

6. The 1st Party-Management has examined Shri Sisir Kumar Sahoo as MW.-1 and filed six documents as annexures to his affidavit evidence.

FINDINGS

ISSUE NO. 1

7. The facts involved in this case, as narrated above, are almost undisputed. The question giving rise to the dispute is whether the action of the 1st Party-Management in not giving protection in Category-V (Drill Operator) to the disputant workman with effect from 14-2-2007 when he joined his duties after recovery from his ailment is legal and justified. It is proved from the evidence of the parties, both oral and documentary, that the disputant workman was working as Drill Operator (Tr.) since before the date of accident he met with during duty hours. Subsequently on the recommendation of the D.P.C. he was placed to the post of Drill Operator, Category-V vide office order dated 9-8-2006. Ext.-2 filed in this regard by the 2nd Party-Union is alleged to be mistakenly issued by the 1st Party-Management in the case of the disputant workman as he was on IOD on the date of the issue of this office order. This appears to be true. Therefore it is apparent that the disputant workman could not join on the post of Drill Operator, Category-V as he was directed to work as Mazdoor Category-I vide office order dated 18-1-2007, (Ext.-3) being unfit for his original job of Drill Operator. Thus he was entitled to be placed on designation/grade/category after being declared fit by the Medical Board on which he was working at the time of accident. His designation/grade/category should not have been changed to Mazdoor Category-I, though the work of that post/category may be taken from him as he was declared unfit for his original job of Drill Operator. It is true that his salary and other monetary benefits have not been curtailed by the 1st Party-Management as has been reflected in the office order dated 18-1-2007 (Ext.-3). Even the disputant workman has admitted in his evidence as W.W.-1 that "prior to my accident whatever salary I was getting presently also I am getting same and similar wages as before. I got promotion to Drill Operator, Category-V after my accident. It is a fact that at present I am working in Category-I and getting my wages in Category-V. I have not way affected in the reversion as I am getting same and similar salary as before." Therefore in my considered opinion the 1st Party-Management has done injustice to designate the disputant workman after he joined his duties on 14-2-2007 as Mazdoor Category-I, instead he should have been designated as Drill Operator (Tr.) on which post he was working since before the date of accident. Issue No. 1 is decided accordingly.

ISSUE NO. 2

8. In view of my findings recorded above under Issue No. 1 the disputant workman Shri Padmanav Biswal is entitled to be designated in the same post where he was

working since before the date of accident. His claim for differential arrear wages is disallowed as he is getting same and similar wages as before, as per his own admission.

9. The reference is answered accordingly.

Dictated and corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 अक्टूबर, 2012

का.आ. 3425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.पी. डब्ल्यू.डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण/श्रम न्यायालय संख्या-2, नई दिल्ली के पंचाट (संदर्भ संख्या 75/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/10/2012 को प्राप्त हुआ था।

[सं. एल-42012/192/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th October, 2012

S.O. 3425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/06) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of CPWD, and their workmen, received by the Central Government on 25-10-2012.

[No. L-42012/192/2005-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

IN THE COURT OF SHRI SATNAM SINGH,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
ROOM NO. 33, BLOCK-A, GROUND FLOOR,
KARKARDOOMA COURT COMPLEX,
KARKARDOOMA, DELHI-110032

ID No. 75/06

In the matter between :

Shri Abdul Wahab,
C/o The General Secretary,
All India (CPWD, MRM),
Karamchari Sangathan,
4823, Balbir Nagar Extension,
Gali No. 13,
Shahdara, Delhi-110032

....Workman

Versus

The Executive Engineer (E),
Electrical Division-9,
CPWD, East Block,
R.K. Puram, New Delhi.

....Management

AWARD

The Central Government, Ministry of Labour vide Order No. L-42012/192/2005-IR (CM-II) dated 25-08-2006 has referred the following industrial dispute to this Tribunal for adjudication:

4214 GI/12-15

“Whether the demand of the Union for regularizing and placing Shri Abdul Wahab in highly skilled category w.e.f. 15-1-1977 is legal and justified? If yes, to what relief is the workman entitled?”

2. The workman filed his statement of claim. Written statement was filed by the management. Thereafter, the workman also filed replication. This case was posted of workman's evidence. However, before the parties could conclude their evidence in this case, they have amicably settled the matter out of court. They have filed terms of settlement arrived at between the parties which were reduced into writing. The terms of settlement have been signed by the workman, Mr. Satish Kumar General Secretary of All India CPWD Karamchari Sangathan as well as by Mr. Ashok Aggarwal, Executive Engineer, Electrical Division CPWD East Block, R.K. Puram, New Delhi. As the matter has been amicably settled between the parties, award in terms of the settlement arrived at between the parties which shall form part of the award is passed in this case and the reference stands disposed of accordingly.

Dated : 12-09-2012

SATNAM SINGH, Presiding Officer

Form H

Form for Memorandum of Settlement

ID No. 75/2006

Memorandum of settlement between the Management of CPWD and All India CPWD (MRM) Karamchari Sangathan, House No. 4823, Gali No. 13, Balbir Nagar Extension, Shahdara, Delhi-110032 under Section 12(3) read with Section 18(3) of Industrial Disputes Act, 1947 before Shri Satnam Singh, Presiding Officer, Central Govt. Industrial Tribunal-Cum-Labour Court No. 2, Room No. 33, Karkardooma Court, Delhi on 08-05-2012.

Name of the Parties :

Representing Management :

Shri Ashok Aggarwal
Executive Engineer, Electrical Division-9, CPWD
East Block, R. K. Puram, New Delhi

Representing Union :

Mr. Satish Kumar, General Secretary
All India CPWD (MRM) Karamchari Sangathan
House No. 4823, Gali No. 13,
Balbir Nagar Extension, Shahdara, Delhi-110032

Short Recital of the Case

All India Central PWD (MRM) Karamchari Sangathan filed an ID Case vide No. 75/2006 against the Executive Engineer, Electrical Division-9, CPWD, East Block, R. K. Puram, New Delhi over the matter of regularization

and placing Shri Abdul Wahab in highly skilled category w.e.f. 15-1-1977 with all consequential benefits.

Notices were issued to the parties and they have filed Statement of Claims, Written Statement and Rejoinder. After prolonged and protracted discussions between the parties on the said issues on various dates, the disputes have been resolved amicably on the following terms of settlement:

Terms of Settlement

1. The Management have made the necessary entries with respect to muster-roll service rendered by the workman w.e.f. 15-1-77 to 10-8-83 in the Service Book of the workman Shri Abdul Wahab, Turnor as per order of Director General of Works, CPWD vide No. 19/77/2000-EC-X dated 26-6-2006 or the purpose of calculation of gratuity and pensionary benefits. The copy of the proof of entry made in Service Book is enclosed herewith as Annexure-1.
2. That workman Shri Abdul Wahab on his satisfaction has accepted the above action of the management and is agreed to withdraw his case and shall not claim anything on account of his muster-roll period service.
3. That in light of the above facts, the matter stands settled.

This Memorandum of Settlement is signed on this 8-5-2012 at Delhi.

Signature of the Parties :

Representing Management	Representing Union	Workman
-Sd-	-Sd-	-Sd-
Executive Engineer (Satish Kumar)	(Abdul Wahab)	
Electrical Division-9, General Secretary	Turner	
CPWD East Block,	All India CPWD	
RK Puram,	(MRM)	
New Delhi	Karamchari Sangathan	
Witnesses:		
1. -Sd-		
2. -Sd-		

नई दिल्ली, 26 अक्टूबर, 2012

का. आ. 3426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रेवा सिधि ग्रामीण बैंक प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 27/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-12012/219/2002-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 26th October, 2012

S.O. 3426.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2003) of the Central Government Industrial Tribunal-cum-labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Rewa Sidhi Gramin Bank and their workmen, received by the Central Government on 26-10-2012.

[No. L-12012/219/2002-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/27/2003

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Ram Milan Kushwaha,
S/o Shri Lolar Prasad Kushwaha,
Vill & PO Karthua, Tehsil Chitrangi,
Sidhi (MP)

... Workman

Versus

Branch Manager,
Rewa Sidhi Gramin Bank,
Branch Karthua, Tehsil Chitrangi,
Distt. Sidhi (MP)

...Management

AWARD

Passed on this 11th day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/219/2002-IR(B-I) dated 26-12-2002 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Rewa Sidhi Gramin bank in terminating the services of Shri Ram Milan Kushwaha, S/o Lolar Prasad Kushwaha w.e.f. 22-8-2000 verbally from the post of Ex-Messenger is justified? If not, what relief Shri Ram Milan is entitled?”

2. The case of the workman Shri Ram Milan Kushwaha in short is that he was appointed on 22-8-97 on the post of messenger and worked till 22-8-2000 on the said vacant post. Thereafter he was terminated without complying the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that the management has violated the principle of first come last go. It is stated that he is still unemployed. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement in the case. The case of the management,

interalia, is that he was engaged on daily wages basis for cleaning the premises and for fetching water for few days on exigency when the permanent peon or messenger of Karthura Branch of the bank was on leave. He was engaged on contract basis and his contract ends every day after his work was over. The provision of Section 2(o) (b) of the Act, 1947 is attracted in his case. His disengagement would not be termed as retrenchment. It is submitted that he is not entitled to any relief.

4. On the basis of the pleadings the following issues are framed for adjudication—

I. Whether the action of the management in terminating the services of Shri Ram Milan Kushwaha w.e.f. 22-8-2000 is justified?

II. To what relief the workman is entitled?

5. Issue No. I

The workman Shri Ram Milan Kushwaha is examined who has supported the case. He has stated that he was engaged orally. He worked from 22-8-97 to 21-8-2000 regularly on the vacant post of messenger. The payment of wages was being done through his Saving Bank Account No. 2720. Vouchers and transfer vouchers were prepared for payment. These facts are admitted by the management in his pleading that the payment of wages were credited in his Saving Bank Account through vouchers. He has further stated that he was terminated without notice and without payment of retrenchment compensation. His evidence shows that he was in continuous service till his termination. As such the provision of Section 25 B of the Act, 1947 is attracted. There is nothing in his evidence to disbelieve this witness.

6. The workman has filed photocopy of the Pass Book bearing S/B A/c No. 2720. This Pass Book A/c No. is admitted by the management in his pleading. The management has also not denied the photocopy of the pass book. The said pass book supports the case of the workman that he was engaged in the year 1997 and worked till 2000. It also appears that he was paid on monthly basis. This fact contradicts the case of the management that he was engaged for few days. This further shows that the management has not come to the Court with a fair case. The workman has also filed few photocopies of vouchers to support the fact that the wages were credited in S/B A/c of the workman through vouchers. The management has also admitted this fact in his pleading at para-12 of the Written Statement. The management has failed to produce the original copies of these vouchers though the workman demanded by giving an application. The order dated 19-3-2012 shows that on his non-production of the document, it is ordered that adverse inference is to be drawn against the management. These photocopies are also not denied by the management. The copies of the vouchers show that he was paid wages on monthly wise. This fact clearly shows

that the workman was not engaged only for few days as has been pleaded by the management. It is clear that the management is not fair in his pleading as such there is no alternative except to believe the story of the workman that he was engaged from 22-8-97 to 21-8-2000. This shows that the provision of Section 25B of the Act, 1947 is attracted and therefore the compliance of Section 25-F of the Act, 1947 was mandatory before terminating the workman from service.

7. On the other hand, the management has examined only oral evidence. The management witness Shri Y.S. Bundela is working as Senior Manager in the management Bank. He has admitted that he was engaged on daily wages. He has further admitted that the wages were credited in his Saving Bank Account through vouchers. He has further stated that he worked on contract basis. There is no paper to show that the management entered into a contract with the workman and what was the terms of contract and what was the amount fixed in the contract. It appears that the pleading and the evidence were vague on the point of engagement on contract basis. Moreover the copy of pass book and the copies of the vouchers clearly shows that his engagement was on monthly basis from 1997 to 2000 continuously. This shows that the provision of Section 25-B of the Act, 1947 is attracted. The management witness has stated in cross-examination that no notice was given nor any compensation was paid to the workman. This shows that there was violation of the provision of Section 25-F of the Act, 1947 and termination or disengagement of the workman w.e.f. 22-8-2000 was not legal and justified. This issue is decided in favour of the workman and against the management.

8. Issue No. II

The workman has pleaded and has also stated in his evidence that he is unemployed since the date of termination. The management has neither denied nor has cross-examined the workman on the said point. Thus on the basis of the discussion made above, it is clear that the action of the management is not justified in terminating the services of the workman without complying the provision of Section 25-F of the Act, 1947. The management is therefore directed to reinstate the workman with full back wages. The reference is, accordingly, answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ए. आई. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 27/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/168/2011-आईआर(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3427.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2012) of the Central Government Industrial-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial dispute between the management of M/s. Atlanta Infrastructure Ltd., 101, Shree Ambasanti Chambers, Opp. Hotel Leela, and their workmen, received by the Central Government on 26-10-2012.

[No. L-22012/168/2011-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 27/2012

Date of Passing Order: 1st October, 2012

L-22012/168/2011-IR/CM-II, dated 17-01-2012

Between:

M/s Atlanta Infrastructure Ltd.
101, Shree Ambasanti Chambers,
Opp.: Hotel Leela, Andheri Kurla Road,
Andheri East, Mumbai-400059

... 1st Party : Management

(And)

Their Workman Shri Ramesh Ch. Satapathy,
At. Rampur Sasan, P.O. Bartana,
Via: BT Pur, PD: Kaira, Balasore.

... 2nd Party : Workman.

Appearances :

None ... For the 1st Party: Management

None ... For the 2nd Party: Workman

ORDER

Case taken up today, Parties are absent. The 2nd Party-workman has still not filed any statement of claim, though

he was issued notice twice through ordinary as well as registered post.

2. The reference was received on 10-2-2012 from the Government of India asking the parties raising the dispute to file the statement of claim complete with all relevant documents, list of witnesses within fifteen days from the date of receipt of the order of reference. Besides that, notices by this Tribunal were also issued to the 2nd Party-workman to file statement of claim, but the 2nd party-workman chose to remain absent through-out various dates fixed by this Tribunal. Hence it appears that the 2nd Party-workman is not at all interested in prosecuting his case. It might be that the case would have been settled out of the court by the parties amicably and no dispute remains to be adjudicated upon by this Tribunal. Therefore it will be a vain exercise to continue further with the case. As such no dispute award is to be passed in this case. Accordingly non-dispute award is passed.

3. Reference is sent back to the Government of India for necessary action at its end.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन. एल. सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 11/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/37/2010-आईआर(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3428.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Neyveli Lignite Corp. Ltd., NLC Contractor, and their workman, received by the Central Government on 26-10-2012.

[No. L-22012/37/2010-IR(CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 17th October, 2012

Present: A. N. JANARDANAN Presiding Officer

INDUSTRIAL DISPUTE No. 11/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their Workman.)

BETWEEN

Sri S. Albert Raj : 1st Party/Petitioner

Vs.

1. The Director (Personnel) : 2nd Party/
Neyveli Lignite Corporation Ltd. 1st Respondent
Neyveli-02
2. Sri S. Tamizhmani : 2nd Party/
NLC Contractor, 2nd Respondent
Near NLC Mine-II Gate
Petrol Bunk, Near to Virudhachalam Road Neyveli-02

APPEARANCE:

- For the 1st Party/ : M/s. A.S. Thambuswamy,
Petitioner Advocate
- For the 2nd Party/ : M/s. NAK Sarma
1st Respondent and N. Nithianandam, Advocates
- For the 2nd Party/ : Sri D. Muthukumar, Advocate
2nd Respondent

AWARD

The Central Government, Ministry of labour vide its Order No.1-22012/37/2010-IR(CM-II) dated 31.01.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the contractor viz. Sri S. Tamizhmani of NLC Ltd. in terminating the services of the contractor workman Sri S. Albert Raj is legal and justified? To what relief is the disputant workman entitled to?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 11/2011 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and separate counter statements as the case may be.

3. The Claim Statement averments briefly read as follows:

Petitioner, a SME/MM/MRR, a contract workman in First Respondent organization under R2 is a semi-skilled worker while was working in the 1st mine of R1 from 2003, an accident occurred on 01-05-2006. He got treated as inpatient in NLC General Hospital from 01-05-2006 to 05-05-2006 and fitness certificate for work was issued to him. In spite of reporting for work, thereafter he was

not given employment by the Respondents. He went to his native place to see his wife and children. His wife who became seriously ill was admitted in a Hospital at Dindigul. He reported the situation and requested for leave of absence. Afterwards when he came to Neyveli and requested R2 to provide work, R2 asked him to meet DGN/MRR/MMM-I for permission to be employed by R2. Petitioner explained the situation with the concerned official after getting occasion to meet him with great difficulty and lapse of time for direction to R2 to provide work to which he gave no reply but only gave a promise to look into the matter. Receiving no information he represented to R1 on 12-01-2008, 15-01-2009 and 26-10-2009 but in vain. In spite of strike and hunger strike of the various trade unions Respondent did not give work to him for no reason. Petitioner is entitled to be reinstated with back wages and all other benefits for which a direction may be given to the Respondents.

4. The averments in the First Respondent's Counter Statement briefly read as follows:

It came to be known that First Party, a contract worker of R2 slipped and fell on a machine on 01-05-2006 and he was hospitalized and provided proper treatment. On becoming fit he rejoined duty with R2 on 13-05-2006 and continued to work till 30-06-2006. He is understood to have had received wages for his service for the applicable period duly signing the register. He did not attend after 30-06-2006 in the premises of R1 without informing R2 or any other. He abandoned his contract employment with R2 w.e.f. 30-06-2006. He is not an employee of R1. First Respondent is not a necessary party. Second Respondent is a Contractor under R1. R1 is not connected with the dispute. Reference is against R2 alone. The dispute has to be confined within the terms of the reference. Attempt to widen the scope of the reference under Section-10(1)(d) is impermissible. Dispute is also barred by delay and laches. R1 had no control over the First Party. ID is not maintainable and is to be dismissed.

5. The averments in the Second Respondent Counter Statement briefly read as follows:

While petitioner was working under R2 for R1 on 01-05-2006 he met with accident and underwent treatment where after he rejoined duty on 13-05-2006 and worked till 30-06-2006. Afterwards he did not report for work. Though a letter was sent to him on 16-07-2007 there was no answer. His absence was reported to the labour Commissioner, Chennai. He worked only for 19 days. As a Contractor only R2 will not come under the jurisdiction of this Tribunal. He also does not come under Industry. Petitioner left the work of his own volition. There is no question of termination. The ID is not maintainable. Work was never denied to him. ID is only to be dismissed.

4214 GI/12-16

6. Points for consideration are:

(i) Whether the termination from service of the contract workman Sri S. Albert Raj is legal and justified?

(ii) To what relief the concerned workman is entitled?

7. Evidence consists of the testimony of WW1 and Ex.W1 to Ex.W14 (subject to relevancy and admissibility) on the petitioner's side and testimony of MW1 and MW2 (No-Cross Examination of MW2) with Ex.M1 and Ex.M2 on the management's side.

Points (i) & (ii)

8. Heard both sides. Perused the records, documents, evidence and the written arguments of the petitioner and R1. Both sides argued in terms of their averments in the respective pleadings. The reference being one calling in question the so-called termination from service of the contract workman, Sri S. Albert Raj by the Contractor, Sri Tamizhmani, the case of the First Respondent that the ID is not maintainable as against it and that it is an unnecessary party is only to be upheld. Coming to the Second Respondent, his case is that the petitioner has not had rejoined duty after his hospitalization following the accident. There was a letter written to him to which he did not send a reply. His absence was reported to Labour Commissioner (Chennai) which has not been denied by the petitioner. The further case of the Second Respondent is that he is not amenable to the jurisdiction of this Tribunal, he not coming within the purview of industry. According to him the petitioner was leaving his work on his own volition. There is no termination at all. The Industrial Dispute is therefore not maintainable and the same is only to be dismissed. Though petitioner as WW1 has given evidence, it is of no avail to substantiate his case of having been terminated by the Second Respondent Contractor under whom he was admittedly a workman. There is also bar for the maintainability of the dispute by way of delay and laches, as argued by respondents. Of the two witnesses examined on the Respondent's side as MW1 (Officer of the First Respondent) and MW2 (Officer of the Second Respondent), the latter witness has not even been cross-examined by the petitioner, whereby leaving that part of the evidence intact. There is no acceptable evidence produced by the petitioner to prove his case. The documents Ex.W1 to Ex.W14 have not been properly proved, for being relied upon. Petitioner himself is not clear regarding the number of days he worked. Admittedly he has received the wages for the period he worked. It is also proved from Ex.M1 and Ex.M2. On the other hand the evidence adduced by the Respondent stands on a better edifice, supported both by oral and documentary evidence tilting the preponderance of probabilities in their favour. In view of the above considerations, the claim of the petitioner is only apt to be dismissed and accordingly dismissed. The petitioner is not entitled to any relief.

9. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th October, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri S. Albert Raj
Petitioner

For the 2nd Party/ : MW1, Sri M.G.S. Nageswara Rao
1st Respondent

For the 2nd Party/ : MW2, Sri S. Tamizhmani
2nd Respondent

Documents Marked:**On the petitioner's side**

Ex. No.	Date	Description
Ex.W1	06-03-2003	Application for Contract Labour
Ex.W2	10-04-2005	Letter of SME Zone, Contract Labourers
Ex.W3	10-04-2005	Letter from Jeeva Contract Labour Union to the Chief Vigilance Officer, Neyveli
Ex.W4	16-05-2006	Letter to Albert Raj
Ex.W5	05-06-2006	Letter from Albert Raj to NLC
Ex.W6	15-02-2007	Sankara Hospital's Medical Slip
Ex.W7	16-02-2007	Asbi Computerized Clinical Lab's Reports
Ex.W8	16-02-2007	Sankara Hospital's Medical Slip
Ex.W9	17-02-2007	Sankara Hospital's Medical Slip
Ex.W10	12-01-2008	Petitioner's representation to NLC
Ex.W11	15-08-2009	Petitioner's representation to NLC
Ex.W12	26-10-2009	Petitioner's representation to NLC
Ex.W13	17-07-2010	Sankara Hospital's Medical Slip
Ex.W14	19-07-2010	Sankara Hospital's Medical Slip

On the Respondent's side

Ex. No.	Date	Description
Ex.M1	May 2006	Wage Register of the month of May, 2006
Ex.M2	June, 2006	Wage Register of the month of June, 2006

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3429.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 110/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/23/2002-आईआर(सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 110/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Hindusthan Lalpeth U/G Sub Area of WCL, and their workmen, received by the Central Government on 26-10-2012.

[No. L-22012/23/2002-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J.P.CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/110/2002

Date: 08.10.2012.

Party No. 1 : The Sub-Area Manager,
Hindusthan Lalpeth Under Ground Sub
Area Of WCL, Post Lalpeth,
Dist. Chandrapur (M S)

Versus

Party No. 2 : General Secretary,
National Colliery Workers Congress,
Dr. Ambedkar Nagar, Ballarpur,
Dist. Chandrapur (M S).

AWARD

(Dated: 8th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, Management of Hindusthan Lalpeth U/G Sub Area of WCL and their workman, Shri Railingu Mallaya Ailwar, for adjudication, as per letter No. L-22012/23/2002-IR (CM-II) dated 14-08-2002, with the following schedule:—

"Whether the action of the management of Hindusthan Lalpeth Colliery No.1, Chandrapur Area of Western Coalfields Limited, in terminating the services of Shri Railingu Mallaya Ailwar, Loader, Vide order No. WCL/CHA/HLUGSA/HLC-I/SOM/PER/2773 dated 23-11-2000 is legal & justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "National Colliery Workers Congress" ("the Union" in short) filed the statement of claim on behalf of the workman, Shri Railingu Mallaya Ailwar ("the workman" in short) and the management of Western Coalfields Ltd. ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim by the union is that the workman was initially appointed as a piece rated loader on 10-04-1979 at Hindusthan Lalpeth Mine No.1 and in the year 1997, he suffered from skin disease and mental illness for which, he was being returned from duty on many days by the authorities and the Supdt. of Mines of Lalpeth Mine No.1 issued charge sheet dated 04/05-06-2000, on the allegation of habitual absenteeism and remaining unauthorized absence from duty and as the workman was illiterate and was under mental disorder, he could not able to submit his reply to the charge sheet and the party No.1 decided to hold a departmental enquiry against the workman and appointed Shri D.K.Chandok and Shri S.G.Vaikar, as the Enquiry Officer and the Presenting Officer respectively and the Enquiry Officer fixed the date of the inquiry on 06-08-2000 at 12 noon, but the enquiry was not held at the schedule time and as alleged, the workman and the representative appeared for the inquiry at 5 P.M. and the inquiry was conducted on the same day after closure of the office and the workman was undergoing treatment for his various illness including mental illness, which fact was known to the management, but still then, management initiated the departmental proceeding and concluded the same on the same day, in absence of any co-worker or witness to the enquiry and second show cause notice was issued by the Mining Supdt. to the workman vide letter No. 1024 dated 14-10-2000 by post and when the workman had gone to the office, for making request for gas connection, the management took his thumb impression on the copy of the second show cause notice and also managed to obtain the signatures of two witnesses on the same and the wife of the workman got the said letter while washing the clothes of the workman and she got the said letter to be read by someone, as she was also illiterate and then requested her relatives for taking necessary action and her relative got a reply prepared and submitted the same to the management on 20-10-2000, where in, explanation was given in respect of the mental illness of the workman and the workman with the help of his relative got an application prepared and submitted the same to the Medical Supdt., WCL, Chandrapur Area Hospital on 20-10-2000, for special leave for one month for his treatment and the workman underwent treatment for his mental illness from 02-05-2000 to 31-01-2001 and he was fit to resume duties w.e.f. 04-01-2001 and the wife of the workman vide letter dated 08-01-2001 appealed to the Manager of Mine to allow her husband to resume duty, explaining the circumstances and the workman also filed an application on 08-01-2001 to allow him to resume duty enclosing the Xerox copies of the documents of his treatment and fitness and when no response was received, the workman appealed to the Chief Manager with a copy to the union and the union took up the case of the workman and the CGM, WCL vide letter dated 12-03-2001 for the first time replied to the union about termination of the services of the workman after the enquiry. It is further pleaded that the enquiry held against the workman was no enquiry and no document or list of

witnesses was supplied with the charge sheet or later on and the charge sheet was vague and the Enquiry Officer was biased, the Enquiry Officer did not explain the procedure of the enquiry, sufficient time was not given to the workman as per the principles of natural justice and material witnesses and documents were not produce in the enquiry and the enquiry is illegal and not proper and in violation of the principles of natural justice.

The union has prayed to set aside the order of termination of the workman from services and to reinstate him in service with continuity and back wages and consequential benefits.

3. The Party No. 1 has pleaded in the written statement that the workman was working as a piece rated loader before his dismissal from service and as the workman remained unauthorised absent frequently, charge sheet was submitted against him on 5-06-2000 and he was asked to submit his explanation within 72 hours, but as no reply was received, it was decided to initiate a departmental enquiry and the workman participated fully in the enquiry on 6-08-2000 (wrongly mentioned as 6-08-2002 in the written statement) and he made it clear not to engage the co-worker and to defend the case himself and the Enquiry Officer submitted his report holding the workman guilty of the charges and the disciplinary authority taking into consideration the record of the proceeding findings of the Enquiry Officer and the past records, imposed the punishment of dismissal from services and the worker had never reported about his mental disorder to the colliery doctor and the workman attended the enquiry and confessed the charges levelled against him and the proceeding was recorded in his presence during office hours only and he himself refused to engage any co-worker or to examine any witness in the enquiry and prior to the holding of the enquiry, the workman had produced sick certificate on many occasions before the Competent Authority, which never revealed about mental illness and after submission of second show cause notice on 14-10-2000, the workman started submitting different certificate as face saving tactics and the charge sheet was not vague and the enquiry was held within the office hours and the workman was given full and fair opportunity for participation in the enquiry proceedings and the enquiry is valid and proper and the punishment imposed is proper, lawful and justified.

4. As this is a case of termination of the services of the workman, after holding of a departmental enquiry, the fairness of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 14-07-2011, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was contended by the learned advocate for the workman that the workman joined service on 10-04-1979 as underground loader and put in

long years of service and as per the principles enunciated by the Hon'ble Apex Court in the case of "workman of Fire Stone Tyre and Rubber Co. of India P. Ltd. Vs. The management and others", the Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also differ from the said findings, if a proper case is made out and what was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter and the terms of Standing Orders of the company shall prevail and the right of the employee to be heard remains available up to final stage. In support of such contentions, the learned advocate for the workman cited the decisions reported in (1997) 7 SCC-739 (Yoginath D. Bagde Vs. State of Maharashtra), AIR 1973-SC-2650 (Western India Match Co. Ltd. Vs. workman), 1970 LLJ. Vol. II-1 (The management of Travancore Titanium P. Ltd. Vs. Their workman), 2010 (1) Mh.LJ-587 (S. V. Deshpande Vs. Presiding Officer, CGIT, Jabalpur).

It is to be mentioned here that the principles as mentioned above are well settled and as such, there is no need to discuss the principles enunciated by the Hon'ble Courts in the decisions mentioned above.

It was further submitted by the learned advocate for the workman that in this case, the Appellate Authority has approved the order of punishment, so the workman lost the opportunity of appeal and as such, the order of punishment cannot be sustained. In support of such contentions, the learned advocate for the workman placed reliance on the decisions reported in 1995 (70) FLR-817 (Sujit Ghosh Vs. Chairman and Managing Director, V.C.O. Bank). 2009 LAB IC -829 (Noc) (CWH) (J Prasad Vs. Board of Directors) and 2001 (III) CLR-930 (Anil R. Joshi Vs. Air India Ltd.).

However, with respect, I am of the view that the judgments are not applicable to the present case in hand as the materials on record show that in this case the Appellate Authority has not acted as the Competent Authority or Disciplinary Authority and has not passed the order of punishment. The order of punishment in this case has been passed by the Disciplinary Authority. The Appellate Authority has only approved the punishment as proposed by the Disciplinary Authority, as per the prevailing practice.

6. The next contention raised by the learned advocate for the workman is that it is clear from the evidence on record that the absence of the workman was due to mental illness and in such a case, a man cannot be supposed to act normally and the documents filed by management from pages 90-101 show that Party No. 1 was quite aware about the sickness of the workman and there was sufficient reason for the workman for remaining absent from duty and as such, the punishment imposed against the workman cannot

be sustained and the punishment is too harsh and the workman is entitled to be reinstated in service with continuity and full back wages.

In support of such contentions, the learned advocate for the workman placed reliance on the decisions reported in 2002 ICLR-884 (Eastern Coal Fields Ltd. Vs. Sri Khogen Bauri), AIR 1984 SC 1892 (Naval Kishore Vs. M/s Darbshaw B. Cursetjeis Sons and others).

7. At this juncture, I think it necessary to mention that the learned advocate for the workman has cited number of other decisions relating to vagueness of charges, binding nature of settlement and in regard to observance of principles of natural justice in departmental enquiry, but as the enquiry conducted against the workman has already been held to be legal and fair and in accordance with the principles of natural justice, I am of the view that there is no need to consider again the principles enunciated by the Hon'ble Courts in the said decisions.

8. On perusal of the materials on record, it is found that there is no iota of evidence to show that the workman was mentally ill during the period in question i.e. from 1997 to 1999. No document was produced by the workman in support of his illness in the departmental enquiry. The documents produced by the workman before this Tribunal also show that the same were obtained after the service of the second show cause notice to him. It is also found that the Enquiry Officer has given his findings basing on the evidence adduced in the departmental enquiry. The workman also in his statement before the Enquiry Officer admitted about his remaining absent from duty. The workman had claimed before the Enquiry Officer that such absence was due to his illness, but not mental illness as claimed in the statement of claim. However the workman did not produce any document in support of his such claim. Hence, the findings of the Enquiry Officer cannot be said to be perverse.

In view of the facts and circumstances of the case as mentioned above are quite different from the facts and circumstances of the cases referred in the judgments cited by the learned advocate for the workman, with respect, I am of the view that the said judgments do not have any application to the present case.

9. So far the proportionality of the punishment is concerned, commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. Hence, there is no ground to interfere with the punishment. Hence, it is ordered:—

ORDER

The action of the management of Hindusthan Lalpeth Colliery No. 1, Chandrapur Area of Western Coalfields Limited, in terminating the services of Shri Railingu Mallaya Aliwar, Loader, Vide order No. WCL/

4214 GI/12-17

CHA/HLUGSA/HLC-I/SOM/PER/2773 dated 23-11-2000 is legal & justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 19/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल.-22012/1/2009-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2009) of the Central Government Industrial Tribunal-cum-Labour NAGPUR as shown in the Annexure in the Industrial Dispute between the management of M/s. Western Coalfields Ltd. and their workmen, received by the Central Government on 26-10-2012.

[No. L-22012/1/2009-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP 19/2009 Date: 11.10.2012.

Party No.1: The General Manager (IR),
M/s Western Coalfields Limited,
Coal Estate, Civil Lines,
Nagpur-440001.

Versus

Party No.2: The General Secretary,
Koyla Shramik Sabha (HMS),
Kharabe Building, 5, New Cotton Market,
Ghat Road, Nagpur.

AWARD

(Dated: 11th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Ltd. and their workman, Shri V.P. Singh, for adjudication, as per letter No.L-22012/1/2009-(IR (CM- II)) dated 8-06-2009, with the following schedule:—

"Whether the action of the management of M/s Western Coalfields Limited in fixing the promotion scale of Shri V.P.Singh w.e.f 15-10-2007 and fixing the date of next increment in promotion grade on 2-10-2008/01-11-2008 and not considering his routine due increment on 1-11-2007 is legal and justified? To what relief is the workman concerned entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, Koyla Shramik Sabha (HMS), ("the union" in short) filed the statement of claim on behalf of the workman, Shri V. P. Singh ("the workman" in short) and the management of M/s. Western Coalfields Ltd. ("Party No.1" in short) filed its written statement.

The case of the workman as projected in the statement of claim by the union is that the wage structure and other terms and conditions of the workmen of party No.1 are governed by National Coal Wages Agreements ("NCWAs" in short) deliberated by the Joint Bipartite Committee ("the JBCCI" in short) and certified Standing Orders and the provisions of NCWAs are binding on the management and for uniform implementation of the provisions of NCWAs in all the subsidiaries of Coal India, the Secretary of JBCCI issues instructions, known as "implementation instructions" and the subsidiaries are not empowered to interpret the provisions contained in NCWAs unilaterally and in case of doubt, the issue has to be referred to the Secretary, JBCCI for clarification and there is specific provision in this regard under clause 13.3.0 of chapter XIII of NCWA-VII dated 15-07-2000 and the party No.1 being one of the subsidiaries of Coal India Ltd., the provisions of NCWAs and implementation instructions issued from time to time are binding on party No.1. The further case of the union is that the workman was a senior clerk in Grade "B" in the monthly pay scale of Rs.7260- 218-11184 of NCWA-VII and in October, 2007, the basic pay of the workman was Rs 10644 and he had got his last increment w.e.f. 01-11-2006 in the afore stated scale of pay and his next annual increment was due on 01-11-2007 in terms of clause 2-9-2 of chapter-II, "Wages, Wage structure and Dearness allowance" of NCWA-VII and the case of the workman was considered by the departmental promotions committee and he was promoted to Grade "A" in the pay scale of Rs.7824-235-12054 of NCWA-VII, by Office order dated 15-10-2007 of Personnel Manager(SE) WCL, Nagpur and in the said promotion order, there was specific direction that the order of promotion will be deemed to have been taken effect from the actual date of joining of the workman in the promotional post and the workman joined in the promotional post in the fore-noon of 2-11-2007 and submitted his joining report to General Manager (IR), who accepted the same on the same day and in view of the joining of the workman in the promotional post on 2-11-2007, his pay was required to be fixed in the promotional post on 2-11-2007 at the stage of Rs.11114, but party No.1 fixed his

pay at the stage of Rs.10879 w.e.f. 15-10-2007 fixed the next date of increment in the promotional post as on 01-10-2008 and by such action, great injustice was caused to the workman and the case of the workman is fully covered under implementation instruction No.60 and the workman represented his case before the General Manager (IR), WCL, Nagpur vide application dated 7-01-2008, but he was not given justice and the workman is entitled to get one increment in Grade B, Senior Clerk on and from 1-11-2007 and fixation of his scale at the stage of Rs. 10,879 and thereafter, fixation of his pay at the stage of Rs. 11,114 w.e.f. 2-11-2007 in the promotional post with the next annual increment w.e.f. 2-11-2008.

The union has prayed to give the workman annual increment on 1-11-2007 in grade 'B' as Senior Clerk and to fix his pay in the promotional post w.e.f. 2-11-2007, the date of his joining the promotional post and all other consequential benefits.

3. The Party No.1 in their written statement have admitted about the facts pleaded in the statement of claim regarding the posting, promotion, date of joining of the workman in the promotional post and fixation of pay in the promotional post. However, it is pleaded by Party No.1 that the workman was working as Senior Clerk in Grade 'B' in I.R. department of its headquarters in the pay scale of Rs. 7260-218-11114 and drawing the basic pay of Rs. 10,530 and he was given service linked up gradation to T & S grade 'A' w.e.f. 1-1-2007 and was fitted in the pay scale of Rs. 7824-235-12054 as per NCWA-VII at Rs. 10644 and the workman assumed the charge of the said post on 2-11-2007, i.e. within a period of three months from the date of order of promotion i.e. 15-10-2007 and as such, his pay was fixed as per circular dated 6/7-3-1996 at the stage of Rs. 10,879 w.e.f. 15-10-2007, the date of promotion order and the date of his next annual increment was fixed as 1-10-2008 and as per the circular dated. 6-7-03. 1996, the general rule is to give effect to the promoted grade and pay scale from the date of issuance of promotion order itself and to maintain parity, particularly seniority amongst equally circumstances promoted employees, fixation of pay in the promotional post is required to be given from the date of order of promotion, which is in this case is 15-10-2007 and as the pay of the workman was fixed as per the policy decision of circular dated 6/7-3-1996, no error was committed by them in fixation of the pay of the workman and what was the date of increment in previous grade is of no consequence, when the workman accepted the promotion to T & S grade 'A' and therefore, the workman is not entitled to any relief.

4. Shri P.L. Sen, the General Secretary of the union and the workman have been examined as the two witnesses by the union in support of the claim, whereas, Shri V.P. George, the Personnel Manager (I.R.) has been examined as a witness by the Party No.1. The witnesses examined by both the parties in their evidence, which is on affidavit have reiterated

the facts mentioned in the statement of claim and written statement respectively.

As, in this case, all most all the facts are admitted by the parties and documents in support of the claims have been filed, I think that there is no need to analyze the oral evidence adduced by the parties.

5. As per the claim of the union, the basic pay of the workman in grade 'B' as Senior Clerk prior to his promotion was Rs. 10,644 per month and the date of annual increment of the workman in Grade 'B' was 1-11-2007 and as such, his basic pay in Grade 'B' should have been fixed at Rs. 10,879 on account of annual increment and therefore, his basic pay in the promotional post on 2-11-2007, the date of joining of the workman in the promotional post should have been fixed at Rs. 11114.

On the other hand, the claim of the Party No.1 is that as the workman was promoted on 15-10-2007 and on that date his basic pay was Rs. 10,644 in grade 'B' as Senior Clerk, his pay in the promotional post was fixed on 15-10-2007 as per circular dated 06/07-03-1996 by giving him one increment of Rs. 235 as promotional benefit and his basic pay was fixed at Rs. 10,879 in the promotional post as on 15-10-2007 and as his pay was fixed in the promotional post w.e.f. 15-10-2007, his next date of his annual increment in the promotional post was fixed as 01-10-2008.

6. The two circulars, basing on which Party No.1 has based their claim have been marked as Exts. M-II and M-III. Ext. M-II is implementation instruction no. 60 dated 19-12-1994, issued by the Member-Secretary, JBCCI regarding admissibility of joining time in case of promotion from one non executive cadre post to another for employees covered under NCWA. The aforesaid implementation instruction reads as follow:

"In the Standardization Committee meeting held on 25-10-94 at New Delhi, it was decided that Non executive cadre employees on promotion to higher post must join within 30 days of the issue of their promotion orders.

However, such of the Non-executive cadre employees who do not join within 3(three) months from the date of issue of the promotion orders, their pay will be notionally fixed at the state which would have been admissible to them, had they joined on the date of issue of promotion orders under normal rules.

It was further decided that in case, the concerned Non-executive cadre employee is transferred on promotion is not released within 3 (three) months, an order will be issued specifying that he stands released. The monetary benefit to such of the employee as result of pay fixation on

promotion will however be admissible from the date of actual joining on higher post by the incumbent concerned."

7. Ext. M-III is a clarification dated 06/07-03-1996 issued by the Member-Secretary, JBCCI to the implementation instruction no. 60 in regard to fixation of pay on promotion. The said circular reads as follows:

"Your kind attention is invited towards para no. 2 of I.I. No. 60 of 19-12-94 which reads as under:

"However such of the non-executive Cadre employees who do not join within 3 (three) months from the date of issue to the promotion orders their pay will be notionally fixed at the state which would have been admissible to them had they joined on the date of issue of promotion orders under normal rules.

It is further clarified that for the purpose of fixation of pay in case of promotion of employees, the basic pay drawn in the lower post on the date of issue of promotion order will be taken into account for fixation of pay in the higher post to which the employee is promoted, but the monetary benefit will be admissible from the date the employee actually joins in the higher post on promotion.

Other terms and conditions will remain the same as mentioned in above Implementation Instruction."

On perusal of Exts. M-II and M-III, it is found that Ext. M-II is a circular issued for clarification of the mode of fixation of pay of non-executive cadre employees on promotion, who do not join within three months from the date of issue of the promotion orders and the date from which the monetary benefits are admissible to such employees. It is also clear from Exts. M-II and M-III that both the documents are to be read together and not in isolation to each other and the procedure prescribed in those two documents regarding the date of fixation of pay in the promotional post and the date of grant of monetary benefits is in regard to the employees, who do not join or are not able to join within three months of the date of their respective promotion and the said procedure is not applicable to the employees, who join in the promotional post within 30 days of the issue of their promotion orders.

8. In this case, the workman was promoted on 15-10-2007 and he joined in the promotional post on 02-11-2007, i.e. within 30 days of the promotion order. So the circular dated 6/7-03-1996 (Ext. M-III) is not applicable to the case of the workman regarding fixation of his pay in the promotional post.

As the next date of annual increment of the workman in the lower grade was due on 1-11-2007, he was entitled to the annual increment in the lower grade on 1-11-2007 and he is also entitled fixation of his pay in the promotional

post on 2-11-2007 with the date of the next annual increment in the promotional post on 2-11-2008. Hence, it is ordered:

ORDER

The reference is answered in favour of the union. The Party No.1 is directed to refix the pay of the workman by giving one annual increment to the workman as on 1-11-2007 in Grade 'B' Senior Clerk, by raising his pay from Rs. 10,644 to Rs. 10,789 per month and then to fix his basic pay at Rs. 11,114 on 2-11-2007 in the promotional post (by giving him one increment of Rs. 235 i.e. Rs. 10,789 + Rs. 235) and to fix the date of his next annual increment in the promotional post on 2-11-2008. The Party No.1 is also directed to grant all consequential benefits to the workman due to such refixation of his basic pay. The award is to be implemented by Party No.1 within one month of the publication of the award in the official gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ.3431.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 39/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.10.2012 को प्राप्त हुआ था।

[सं. एल-22012/229/2006-आई आर (सीएम-11)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 39/2007 of the Central Government Industrial Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure in the Industrial Dispute between the management of Mungoli O/C Mine of WCL, and their workman, received by the Central Government on 26-10-2012.

[No. L-22012/229/2006-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND. PRESIDING OFFICER.
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/39/2007

Date: 01-10-2012.

Applicant : The Working President,
Rashtriya Colliery Mazdoor Congress,
Vijay Bhawan, Vitthal Mandir Ward,
Chandrapur.

Versus

Respondent : The Sub Area Manager,
Mungoli O/C Mine of WCL
Wani Area, Post: Sakhara (Kolgaon),
Tah. Wani, Distt. Yavatmal (MS) 445307.

AWARD

(Dated: 1st October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Manoj Getme, for adjudication, as per letter No. L-22012/229/2006-IR (CM-II) dated 05-07-2007, with the following schedule:—

"Whether the action of the management of Western Coalfields Limited in denying employment to Shri Manoj Getme, the dependent of deceased workman is legal & justified? If not, to what relief is the dependent of the deceased workmen entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the applicant, Shri Manoj Getme, ("the applicant" in short), filed the statement of claim and the management of WCL, ("Respondent" in short) filed its written statement.

The case of the applicant as projected in the statement of claim is that respondent is a public sector undertaking of the Government of India and a subsidiary of Coal India Limited, the Apex Coal Company and is a state for the purpose of Article 12 of the Constitution of India. The further case of the applicant is that Late Aswapati @ Ashok Getme, his deceased father was employed in the post of Fitter in Mungoli Open cast Mines under the jurisdiction of the respondent and while in employment his father expired on 11-05-2004, leaving his wife, Smt Bebitai @ Bebinanda (44 years of age) and two sons, namely, Ganesh @ Manoj, (the applicant himself) (23 years of age) and Kartik @ Kishore (21 years of Age) behind him and after the death of his father, they approached the respondent for disbursement of the amount of gratuity and other terminal benefits and the respondent referred the matter of payment of gratuity to the controlling authority and vide order dated 31-01-2005, the controlling authority directed the respondent to pay gratuity to him and his mother and in respect of other terminal benefits accrued in the name of his father and he himself, his mother and brother moved the Civil Court for grant of succession certificate and the Second Joint Civil Judge, Senior Division, Chandrapur after holding necessary proceedings in the matter issued succession certificate in their favour empowering to collect all amounts towards pension, arrears of pay and life cover amount of his deceased father.

It is further pleaded by the applicant that upon the untimely death of his father, he made an application for his employment in terms of the scheme framed under the National Coal Wage Agreement-VI, annexing the family details certificate issued by the Tahsildar, Arvi, but the respondent orally intimated him that the competent authority did not consider his case for appointment for the sole reason that there is change in his name in the records and the refusal of the respondent to provide employment to him runs counter to the specific provision made in NCWA and implementation instruction no.8 issued by the Coal India Limited. The further case of the applicant is that he is the eldest son of deceased employee has been acknowledged by the competent Civil Court by granting him succession certificate to draw the amount of arrears of pension and other terminal benefits left by his deceased father and under such circumstances, the reason cited for not considering his case for employment is wholly illegal, unfair and smacks of arbitrariness.

The applicant has prayed to direct the respondent to issue appointment order in terms of the provision made in this respect in NCWA-VI.

3. In the written statement, the respondent has pleaded inter-alia that the present dispute appears to have been filed by the union, Rashtriya Colliery Mazdoor Congress, but no statement of document has been produced to show that the deceased workman, Aswapati Getme was a member of the said union and as such, the dispute cannot be termed as an industrial dispute under the provisions of Section 2-K of the Act and as there is no industrial dispute, the reference is liable to be rejected. The further case of the respondent is that though the union had raised the dispute before the Assistant Labour Commissioner (Central), Chandrapur, the statement of claim has not been filed by the union, but the same has been filed by the applicant and therefore the statement of claim is neither proper nor tenable and is liable to be rejected on this short ground. It is further pleaded by the respondent that Ashwapati Janrao Getme was working as E.P. Fitter at Open Cast Mines, Mungoli and he died on 11.05.2004 and all the dues like gratuity, provident fund etc. have been paid to the claimants after following due process of law and procedure and one Shri Manoj Ashokrao Getme claimed for appointment on compassionate grounds in place of deceased Aswapati, under the provisions of NCWA-VI and on perusal of records, it was observed that name of the deceased employee on record was Ashwapati and not Ashok and as per the description of his family members the name of his wife was Bebitai and names of his sons were Ganesh and Kartik and in view of the above position, when the application submitted by Shri Manoj was taken into account, a vest difference was noticed in the names of the dependents of the employee and not only the same, in the certificate produced by Shri Manoj, name of his father was shown as Ashok and not Aswapati and in the light of the

above observation, there was serious doubts about the identity of the applicant, who was claiming for employment. It is further pleaded by the respondent that the subsequent affidavit and succession certificate produced by the applicant also did not make the claim beyond shadow of doubt and under such circumstances, it will not be proper to consider the claim of the applicant for compassionate appointment and the reference is liable to be rejected and employment to a dependent under NCWA is to be provided by the management in genuine and undisputed cases and in this instant matter, there is glaring discrepancy in the identity of the applicant as recorded in the service file of the Late employee and records submitted by him and as such, the claim is not tenable.

The further case of the respondent is that name of Ashwapati was also not Ashok and the subject of gratuity is outside the scope of the present reference and payment of some of the terminal benefits was made by them as per requirements of law and the application filed by the applicant could not be considered, because of lack of bonafide details and the action taken by it in denying employment to the applicant is justified and the applicant is not entitled to any relief.

4. In support of his claims, the applicant has examined himself as a witness, besides placing reliance on the documents produced by him. No oral evidence or documentary evidence has been adduced by the respondent.

The evidence of the applicant is on affidavit. In his examination-in-chief, the applicant has reiterated the facts mentioned in the statement of claim. He has also proved the documents Exts. W-I to W-VII, including the National Family Planning Certificate in the name of his mother, death certificate of his father, succession certificate and family member certificate issued by the Tahsildar.

In his cross-examination, the applicant has categorically stated that his father had two names and his father's name was entered as Ashwapati in the documents of WCL and the other name of his father was Ashok and the name of his younger brother is Kartik @ Kishor and he himself is known as Manoj @ Ganesh and the name of her mother was Bebinanda before her marriage and after her marriage, her name became Bebitai and form nos PS-3 and PS-4 of WCL and pension papers of WCL, both names of his father, his younger brother and himself were mentioned. In his cross-examination, the applicant has further stated that after the death of his father, he had applied for compassionate appointment, but management returned the application and other documents to him on the ground that he is not the legal heir (son) of Ashwapati.

5. At the time of argument, it was submitted by the learned advocate for the applicant that the application of the applicant for compassionate appointment was not

considered only on the ground of having some discrepancies in his name as per the records of WCL and his application, but admittedly, the management of WCL paid the terminal benefits of Ashwapati to the applicant and his mother and it is clear from the documents produced by the applicant that the applicant is the dependent son of Ashwapati @ Ashok and he is entitled for compassionate appointment.

6. Per contra, it was submitted by the learned advocate for the respondent that in view of the vital discrepancies in the name of the applicant, his deceased father and all other members of his family in his application and in the documents and the documents of the respondent, the identity of the applicant is doubtful and as such, he is not entitled to any relief.

7. On perusal of the pleadings of the parties, the materials on record and taking into consideration the submissions made by the learned advocates for both the parties, it is found that the respondent did not consider the application of the applicant for compassionate appointment only on the ground that there was glaring discrepancy in the identity of the applicant as recorded in the services file of deceased employee, Ashwapati and records submitted by the applicant.

8. Perused the documents filed by the applicant Ext. W-VI is the succession certificate issued by the court of 2nd Jt. Civil Judge (Sr. Div.) Chandrapur in Spl. MJC No. III/2006 in favour of the applicant, his mother and his brother. In the said Spl. MJC, the Chief General Manager, WCL, Wani Area, Urja Gram Tadali, Chandrapur and the Regional Commissioner, WCL, General Provident Fund Coal Mines, Jaripatka, Nagpur were the non-applicants. It is found from Ext. W-VI that succession certificate was granted in favour of the applicant and his mother and brother in respect of an amount of Rs. 1,02,500.00 towards the securities left by deceased Ashwapati @ Ashok, the father of the applicant. In Ext. W-VI, the applicant, Shri Ganesh @ Manoj has been described as the elder son of Late Ashwapati. In Ext. W-VII, the legal heirs' certificate issued by the Tahsildar on 09.07.2004, the applicant has been shown as the son of Ashwapati @ Ashokrao. Ext W-V, the death certificate of Ashwapati shows that he had two names *i.e.* Ashwapati @ Ashokrao. From the documents filed by the applicant, it is clear that he is the son and a dependent of the deceased employee Ashwapati @ Ashokrao and he is entitled for consideration for compassionate appointment as per the provisions of NCWA-VI and non consideration of his application for compassionate employment by the WCL is illegal. Hence, it is ordered:—

ORDER

The action of the management of Western Coalfields Limited in denying employment to Shri Manoj Getme, the dependent of deceased workman is illegal and unjustified.

The applicant is entitled for consideration for compassionate appointment as per the provisions of NCWA-VI. The management of Western Coalfields Limited is directed to consider the application if filed by the applicant for compassionate appointment holding him the dependent of deceased workman, Ashwapati @ Ashokrao Getme, as per the provisions of NCWA-VI within one month of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ.3432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन.एल.सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 15/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/51/2010-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award Ref. No. 15/2011 of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of NLC Ltd., Neyveli and their workmen, received by the Central Government on 26-10-2012.

[No. I-22012/51/2010-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT

INDUSTRIAL

TRIBUNAL-CUM-LABOUR COURT

CHENNAI

Thursday, the 18th October, 2012

Present: A.N. JANARDANAN,
Presiding Officer

INDUSTRIAL DISPUTE No. 15/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their Workman)

BETWEEN

The General Secretary : 1st Party/
NLC Thozhilalar Viduthalai Munnani Petitioner
D-14, Alway Road, Block-29
Neyveli

Vs.

The Director (Personnel) : 2nd Party/
NLC Ltd. Respondent
Neyveli.

Appearance:

For the 1st Party/Petitioner Union : Sri V. Ajoy Khosh,
Advocate

For the 2nd Party/Management : M/s. N.A.K. Sarma,
Advocate

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-22012/51/2010-IR(CM-II) dated 10-03-2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Neyveli Lignite Corporation in inflicting the punishment of stoppage of one increment without cumulative effect upon Sri Arasu Gunasekaran, a Senior Draughtsman Gr. I with effect from 2003 is just and legal? If not, to what relief is the workman entitled for?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 15/2011 and issued notices to both sides. Both sides entered appearance through Counsel and filed their Claim and Counter Statement as the case may be.

3. The contentions in the Claim Statement briefly read as follows:

On 17-10-2003 Sri Arasu Gunasekaran, Senior Draughtsman Grade-I/G.Z. scheduled to work in general shift between 10.00 AM and 05.00 PM at Electrical General Zone Office while after 05.00 PM the First Party had discussion with Thiru Siva Sankaran, A. T. A. regarding the matter of Sri Sakthivel, the Joint General Secretary of the Union, who had made complaint against his neighbour about the construction of a shed in front of the house allotted to him obstructing the way to his house contrary to the allotment rules. Instead of directing to remove the obstruction, township administration ordered enquiry why the allotments in favour of Sakthivel and his neighbour should not be cancelled. When workman questioned the fairness of the enquiry ordered the ATA retorted who he was to interfere and that complaint would be given against him to the General Manager (GM). He

informed his status as an Office Bearer of the LLF and his competency. He also met the GM and explained the matter. A charge memo was issued on 01-11-2003 alleging that on 17-10-2003 he unauthorizedly left the work spot and went to Township Administration's Office at about 16.15 hours and raised objections against the action initiated by TAD against K. Ganesh, Technician, Grade-II (CB), Thermal Station-I for having sublet the quarters allotted to him and for getting allotment of more than one quarter in violation of rules. He was further alleged of having used abusive and un-parliamentary words against ATA and GM/PA. That he threatened the ATA with dire consequences if the action against Thiru Ganesan was not stopped. He denied the allegations in his explanation dated 14-11-2003. An enquiry was held examining four witnesses on the prosecution side and six witnesses on the defence side. By the enquiry report charge of willful insubordination or disobedience and absence from place of work during working hours without permission were proved. To the proposed memo dated 03-08-2004 asking to explain why he should not be imposed stoppage of increment without cumulative effect, he submitted explanation denying the charges and to drop the action. On 29-10-2004 holding explanation not satisfactory the punishment was imposed. Appeal filed was rejected. Punishment is arbitrary and violative of Article-14 and 21. There was no evidence worth the name to hold the charge as proved rendering the finding perverse. There was no legal evidence. No permission is required to go to the Canteen for Tea or Food during working hours. Finding is based on presumption and assumption. All the defence witnesses supporting him having not been cross-examined, their evidence is in favour of the workman only. He went to TAD only after 05.30 PM after duty was over. It was only the ATA who threatened the workman. Action is not bonafide but amounts to victimization. Hence the claim.

4. Counter Statement averments briefly read as follows:

The incident took place during working hours in the presence of the staff and employees of Estate Section of Township Administration Office. His acts are unbecoming of a workman and amounted to misconduct under Standing Order-46(i)(vii)(xxxv)(xxxviii) of Respondent Corporation. There was P1 marked on management's side and two exhibits marked on defence side. There was no grievance against the enquiry by the workman. There was no violation of principles of natural justice. Enquiry was fair and proper. The punishment is minor and was on a lenient view. It is not excessive or unreasonable. The Appellate Authority's order as well as the order of the Disciplinary Authority are legal and proper. It is commensurate with the misconduct. The dispute is raised after 3 years and is barred by delay and laches. The dispute is frivolous, vexatious and is to be dismissed. First Party has admitted the workman to have had gone to TA office and to have been involved in the incident in question.

Punishment is not arbitrary or violative of Article-14 and 21. Findings are based on evidence. Finding is not perverse. It is based on legal evidence. The claim is to be dismissed.

5. Points for consideration are:

- (i) Whether the stoppage of one increment without cumulative effect on the workman is just and legal?
- (ii) If not to what relief the concerned workman is entitled?

6. Evidence consists of the oral evidence of WW1 and Ex. W1 to Ex. W18 on the petitioner's side with no oral or documentary evidence adduced on the side of the Respondent.

Points (i) & (ii)

7. Heard both sides. Perused the records, documents, evidence and written arguments on the Respondent's side. Both sides argued keenly in terms of their contentions in their respective pleadings. It was urged on behalf of the petitioner that there is no question of delay or laches because the dispute matter was being pursued with the department in the meantime. Again only for a dispute under Section-2A of the ID Act question of limitation comes. That too after the amendment of the ID Act w.e.f. 15-09-2010 as well as for punishments after the said crucial date. There is no legal evidence which renders the finding perverse. No misconduct is made out. Finding is that the Workman only left the work spot and not abused. There has not been any complaint from any quarters or any evidence thereto. According to defence witnesses the workman was only in the work spot. The finding is only on presumption and assumption. No imputation or evidence as to which or what order was disobeyed by the workman to attribute insubordination. On behalf of the Respondent, it is argued that there is admission by the workman regarding his having gone to the place of incident as also proved from Ex. W3-Explanation. The Charge Memo allegations are not denied. There was Ex. W1-Complaint given by ATA. The same has been corroborated in the enquiry. The same has not been rebutted.

8. Reliance was placed on behalf of the Respondent to the decisions of the Apex Court in :

- JT 2008(2) SC 272 wherein it was held that "16. this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the Enquiry Officer or the punishment awarded by the Punishing Authority".
- JT 2011(4) SC 14 wherein it was held that "Therefore, courts will not interfere with findings of fact

recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see where a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations".

9. Here there is no challenge against the fairness of the enquiry. In a properly and fairly held enquiry, not challenged, question of adequacy of evidence does not afford grounds for interference. The question is not whether there is adequate evidence but some evidence of legal character to arrive at the conclusion. This is a case with some legal evidence and not a case of no legal evidence at all to warrant the conclusion. There is no specific denial of the allegations in the explanation of the workman. The cumulative effect of all these, by way of logically probative materials lead to the conclusion as to the misconduct proved against the workman being true. Therefore the finding is valid. The finding is therefore not perverse. Petitioner had admitted the incident in his Ex. W3-Explanation that he cautioned ATA. The time of incident in the charge memo has not been denied by him. The allegations in the Ex. W1-Complaint have not been sought to be rebutted by the workman. The question of proportionality as to the punishment does not call being looked into in this case. Section-11A of the ID Act is not applicable. Even if limitation law is not applicable when there is delay and laches on the part of the claimant in the absence of valid explanation that deserves due consideration for appropriate decision.

10. On all the above considerations it is held that the stoppage of one increment without cumulative effect on the workman is only just and legal and he is not entitled to any relief.

11. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th October, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/ : WW1, Sri Arasu Gunasekaran
Petitioner

For the 2nd Party/ : None
Management

Documents Marked:**On the petitioner's side**

Ex. No.	Date	Description
Ex. W1	17-10-2003	Complaint submitted to the GM/TA by S. Sivasankaran (Appellate Authority) against Thiru Arasu Gunasekaran
Ex. W2	01-11-2003	Charge Memo issued to Thiru Arasu Gunasekaran by the 2nd Party
Ex. W3	14-11-2003	Explanation to the Charge Memo given by Thiru Arasu Gunasekaran
Ex. W4	23-01-2004	Enquiry Proceedings
Ex. W5	10-07-2004	Enquiry Officer's report
Ex. W6	03-08-2004	Second Show Cause Notice issued to Thiru Arasu Gunasekaran
Ex. W7	20-08-2004	Explanation to the second show cause notice given by Thiru Arasu Gunasekaran
Ex. W8	29-10-2004	Final order issued by the 2nd Party
Ex. W9	09-11-2004	Appeal filed by Thiru Arasu Gunasekaran before the Appellate Authority
Ex. W10	25-04-2005	Order rejecting the appeal by the Appellate Authority
Ex. W11	12-02-2007	Second Appeal filed by Thiru Arasu Gunasekaran before the Dy. General Manager
Ex. W12	22-03-2007	Reminder letter sent to the General Manager by Thiru Arasu Gunasekaran
Ex. W13	29-05-2007	Order rejecting the Second appeal issued by the Dy. General Manager
Ex. W14	28-01-2008	ID raised by the 1st Party before the Assistant Commissioner of Labour (Central) u/s 2(k) of the ID Act
Ex. W15	21-05-2008	Counter filed by the 2nd Party before the Assistant Commissioner of Labour (Central)
Ex. W16	-	Reply to the Counter Statement filed by the 1st Party
Ex. W17	08-07-2010	Failure report issued under Section 12(4) of the ID Act
Ex. W18	10-03-2011	Reference made by the Government

Documents Marked:**On the Management's side**

Ex. No.	Date	Description
		N/A

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 56/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/23/2000-आईआर(सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 56/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 26-10-2012.

[No. L-22012/23/2000-IR(C-II)]

B. M. PATNAIK, Section Officer

**ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/56/2002

Presiding Officer : Shri Mohd. Shakir Hasan

The Secretary,
M.P. Koyla Shramik Sangh,
PO Amlai Colliery,
Shahdol

...Workman/Union

Versus

The General Manager,
Sohagpur Area of SECL,
PO Dhanpuri,
Shahdol

... Management

4214 GI/12-19

AWARD

Passed on this 8th day of October, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-22012/23/2000-IR(CM-II) dated 1-4-2002 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the General Manager, Sohagpur Area of SECL, PO Dhanpuri, distt. Shahdol (MP) in not protecting wages on conversion from Piece rated to time-rated category in respect of Shri Narayan Prasad S/o Hira Ram carpenter w.e.f. 1-12-92 is legal and justified? If not, to what relief the workman is entitled to?”

2. The case of the Union/workman in short is that the workman Shri Narayan Prasad was initially appointed as a loader on 5-5-1973 at Amlai Colliery Budhar No.1 Mine. He was transferred to Chachai Colliery in 1979. The workman gave an application dated 11-10-1991 from changing his designation of piece-rated loader to carpenter with protection of pay. He had also earlier gave an application dated 14-9-91 for changing his designation. The management converted him from piece rated to time rated as General Mazdoor Cat-I on initial pay of Rs. 38.47 *vide* order dated 28-11-1992/1-12-1992. Thereafter he was regularized as carpenter in Category IV on initial pay of Rs. 42.18 *vide* order dated 14-1-1993. The workman represented to the Chief Mining Engineer and sub-Area Manager, Chachai for protection of basic pay and the arrears arising thereof. It is stated that the workman was converted from piece rated to time rated before cut-off date as given in the circular dated 17-2-1995. The management had given pay protection to many similarly situated workers prior to the cut-off date. The action of the management is arbitrary and is said to be unfair labour practice. It is submitted that the management be directed to protect his pay w.e.f. 1-10-1992 and to pay all consequential benefits.

3. The management appeared and filed Writtent Statement in the case. The case of the management, inter alia, is that admittedly the workman was appointed as Tub loader at Amlai Colliery in May 1973. He was posted as piece rated loader at Chachai in Underground Mine. He submitted an application/option to convert him from piece rated to time rated. Again he gave option for such conversion and did not ask for pay protection. On the option of the workman, the management converted him as General Mazdoor Cat-I in the initial basic pay of Rs. 38.47 and was deployed as carpenter at Chachai Group. Subsequently he was regularized as carpenter in Category IV in 1993. The fixation of pay of the workman in cat-I was done on 1-12-1992 and in Category IV on 1-1-1993 before the cut-off date as per circular. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the action of the management in not protecting the wages of Shri Narayan Prasad on conversion from piece rated to time rated category w.e.f. 1-12-1992 is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I

The workman is examined himself in the case. He has supported his case. In cross-examination, he has admitted that he had filed applications for conversion from piece rated to time rated. He has admitted the copies of the said application which are filed by the management which are marked as Exhibit M/2 and M/2(a). He has stated that he was converted as General Mazdoor Cat-I but it was not acceptable. However he didn't want to forgo the post. His evidence shows that he had opted for time rated and after joining the time rated, he wanted pay fixation. He has admitted that he was promoted to category-IV. This shows that he had accepted the promotion in time rated also.

6. The workman has also adduced documentary evidence. Exhibit W/4 is the circular dated 17-2-1995 with respect to pay protection in case of piece rated workers converted to time rated. Clause 2 of the said circular runs as follows—

“The SPRA paid to such employee till they worked in PR job prior to their conversion will be taken into consideration at the time of fixation in time rated and the same will be treated as basic (*i.e.* group wages and SPRA). However, in such of the conversion cases prior to 1-1-1994 where the workmen were not placed in category/scale, the SPRA applicable to the individual at the time of their conversion shall be taken into account for the purpose of fixation of basic pay, but shall not apply to such cases where the workmen have opted for conversion.”

This circular shows that in such cases in which conversion was done prior to 1-1-1994 and where the workman was not placed in category/scale. Secondly it shall not apply to such cases where the workman has opted for conversion.

7. Now let us examine that the workman was placed in a category/scale or whether he had opted for such conversion. The learned counsel for the union submitted that he had applied conditionally for conversion subject to protection of his pay. Exhibit W/2 is the office order dated 28-11-1992 whereby the workman was placed from piece rated to time rated in General Mazdoor Category-I in pay scale of Rs. 38.47-0-48.27 of NCWA-IV. This clearly shows that he was placed in a category as well as in a pay scale before the cut-off date *i.e.* 1-1-1994. Exhibit W/6 is the

representation dated 11-10-1991 whereby he had requested for conversion in time rated without monetary loss. Thus the evidence of the Union/Workman shows that the workman was not ready to revert back to the post of piece rated even his pay was not protected.

8. On the other hand, the management has also adduced oral and documentary evidence. The management witness Shri Satya Parkash is Senior Manager (Personnel) at Amlai Bangwar Damini sub Area. He has supported the case of the management. He has stated that the workman opted for conversion from piece rated to time rated *vide* Exhibit M/2 and again Exhibit M/3. He has stated that on his option he was converted from piece rated to time rated and scale pay was given to him. There is nothing in his evidence to disbelieve him. His evidence shows that he was converted on his option as such he was not entitled to pay protection.

9. The Management has also adduced documentary evidence. Exhibit M/1 is the appointment letter dated 13-5-73 of the workman where by he was appointed as tub loader as piecerated. This is an admitted fact. Exhibit M/2 and M/2(a) are applications of the workman of the year 1989 whereby he had reported about his ill health and requested to covert him from piece rated to time rated and to place him on surface duty without any request of pay protection. This shows that his option was given much earlier than the representation filed in 1991 (Exhibit W/6). Exhibit M/3 is the order communicated to the workman on 2-1-1989 that his request was allowed. He was allowed to work as time rated in L.H.D Section. This clearly shows that he was already converted form piece rated to time rated by the management prior to give subsequent representation in 1991 for pay protection (Exhibit W/6). The evidence of the workman further shows that the declined to go back to piece rated job. Exhibit M/4 is the office order dated 28-11-1992 whereby the workman was placed in General Mazdoor Cat-I. Thus it is clear that before the cut off date of the circular 17-2-1995 the workman opted for conversion and was placed in a pay scale. This shows that the said circular was not applicable. It is clear that the action of the management was justified in not protecting his pay on the basis of circular as he had already opted for conversion without request of pay protection. This issue is decided against the workman and in favour of the management.

10. Issue No. II

On the basis of the discussion made above, it is clear that the workman is not entitled to any relief. The reference is accordingly answered.

11. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 72/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/10/2012 को प्राप्त हुआ था।

[सं. एल-22012/391/1997-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3434.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 72/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 26-10-2012.

[No. L-22012/391/1997-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND. PRESIDING OFFICER.
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/72/2000

Date: 15-10-2012.

Party No.1 : The Chief General Manager,
WCL Chandrapur Area,
PO : & Distt. Chandrapur (MS)

V/s

Party No.2 : Sh. G.V.R. Sharma, Jt. General Secretary,
Rashtriya Koyla Khadan
Mazdoor Sangh
(INTUC 604-Behind Giripeth Post Office,
Opp. RTO, Nagpur.

AWARD

(Dated: the 15th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation, to the management of Western Coalfields Limited and their workman, Shri Surendra Purushottam Ugade, to Central Government Industrial Tribunal, Mumbai for adjudication, as per letter No.L- 22012/391/1997-IR (C-II) dated 27-11-1998, with the following schedule :

“Whether the action of the management of WCL, Chandrapur Area in terminating Shri Surendra Purushottam Ugde, Ex-General Mazdoor *w.e.f.* 14-07-87 is legal and justified? If not, to what relief is the workman entitled? What other directions are necessary in the matter?”

Subsequently, the reference was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Surendra Purushottam Ugde, (“the workman” in short) through his union, the Rashtriya Koyala Khadan Mazdoor Sangh (INTUC) (“the Union” in short) filed the statement of claim and the management of WCL Chandrapur Area (“party no. 1” in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that workman was the permanent employee of party no. 1 and was appointed at Mahakali colliery and while he was working as general mazdoor category II at Mahakali colliery, by order dated 31-08-1986, he was transferred to Area headquarters, WCL, Chandrapur Area and he joined his duty in his new place of posting in September 1986 and the workman could not able to attend his duties sometime in January, 1987 due to some unavoidable circumstances, for which, charge sheet dated 02-02-1987 was alleged to be served on him, but actually, the charge sheet was not at all served upon him and in the month of February, 1987, the workman reported for duty to the Sr. Personnel Officer(Admn.), but he was not allowed to resume duties on the ground of submission of charge sheet and contemplation of initiation of departmental enquiry and till completion of the enquiry, he would not be allowed to join duties and the charge sheet, notices of the departmental enquiry and order of punishment of termination of service imposed on 14/15th July, 1987 were not served on him and in spite of repeated approach by the workman to allow him to join duty, no attention was paid to his request and the workman made written request on 19-11-1995, to set aside the wrongful order of termination of his services, but the party no.1 did not reply and the matter was taken up by the union by letter dated 23-05-1996 addressed to the Chief General Manager, Chandrapur Area but the same was also not replied by the management, so industrial dispute was raised by the union and the matter was referred to the Tribunal for adjudication.

It is further pleaded by the union that the workman was not given fair and reasonable opportunity at the time of initiation of the departmental enquiry and so also during the enquiry and the charge sheet, notices of the enquiry and order of punishment were not served on the workman and the past clean and unblemished service record was not taken into consideration before imposing the severe most penalty of dismissal from service by the party no. 1

and the punishment is not at all proportionate to the charges leveled against the workman and the punishment is very harsh and severe and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

3. The party no. 1 in its written statement has pleaded inter- alia that the workman was working as a general mazdoor in the Area headquarters prior to termination of his services and the workman had developed the habit of remaining unauthorized absent from duty, so he had been warned several times, but the warning had no effect upon him and there was no improvement in his conduct and he again remained absent unauthorisedly from 24-01-1987, without obtaining sanction of leave and without any intimation to the management and therefore, he was charge sheeted for habitual absenteeism and unauthorized absence vide charge sheet dated 02-02-1987 and he was asked to explain his conduct within 48 hours and as the workman had not sent any intimation about his whereabouts to the management, the charge sheet was sent to him by registered post to his local as well as to his permanent home address but the same were returned undelivered and a copy of the charge sheet was also displayed on the notice board and management waited for nearly two months, but the workman neither reported for duty nor sent any information about his inability to report nor sent any information about his whereabouts and it was learnt that the workman had taken bank withdrawals slips from two employees worth Rs. 1100/- on 24-01-1987 to bring their money from the bank, but he had not given them the money, though he had withdrawn the same from bank and in such back ground, without waiting indefinitely for the return of the workman, it was decided to held an enquiry and accordingly by order dated 31-03-1987/01-04-1987, Shri M.A. Khan was appointed as the enquiry officer and the enquiry officer fixed the enquiry on 23-04-1987 and sent information to the workman by registered post to his local as well as permanent address, vide his letter dated 15-04-1987, but the Enquiry Officer postponed the enquiry from 15-04-1987 to 07-06-1987 and sent information to the workman about the same in his local and permanent address by hand, but the same could not be delivered to him as he was not available at either of the addresses and therefore, a copy of the same was pasted on the door of his house. but inspite the same, the workman neither attended the enquiry on 07-06-1987 nor sent any information about his whereabouts, so the enquiry was held ex-parte and management representative produced and examined the witnesses and produced documents during the course of enquiry, in support of the charges and the enquiry officer submitted his report on 09-07-1987 to the Sr- Personnel Officer(Admn.) holding the charges leveled against him to have been proved and considering the seriousness of the misconduct, the workman was terminated from services vide office order dated 14/15-07-1987 with immediate effect, with approval

of the competent authority and even after the termination of his services, the workman did not turn up and he also did not file any appeal against the order of punishment within the stipulated time and after lapse of 3 years, the workman appeared and filed an appeal to the Chief General Manager, vide his application dated 12-06-1990, stating there in the circumstances under which, he had been absconding unauthorisedly and made prayer to take him back in employment and in the appeal, he had admitted his guilt and had tendered apology, by giving assurance of good conduct but the Chief General Manager, did not agree for reconsideration, on the ground that the case of the workman was a very bad case, having no merit for consideration and as there was no merit in the demand of the union, there was no question of sending a reply to the union, but the union however, during personal discussion was conveyed with the views of the management and while imposing the punishment, the past record of the workman was taken into consideration and the punishment is neither harsh nor disproportionate to the charges and the workman is not entitled for any relief.

4. As this is a case of termination of the services of the workman after holding a departmental enquiry, the validity of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 23-09-2011, the departmental proceeding conducted against the workman was held to be legal and proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the union representative that charge sheet under clauses 17(i) (d) and 17 (i) (p) of Model Standing order, 1987 was submitted against the workman, on the allegations of his remaining unauthorized absence, habitual late attendance and leaving the place of work, without permission and the enquiry officer in his findings has concluded that the charges of unauthorized absenteeism and leaving the place of work without permission to have been proved against the workman and the enquiry officer has mentioned about issuance of five letters to the workman earlier, for unauthorized absenteeism, but on close perusal of the departmental proceedings, it can be found that such letters were not produced in the proceedings of the enquiry by the management representative and such letter were not taken on record and as such, the findings of the enquiry officer that the management representative submitted the past records of the workman for habitual unauthorized absenteeism is baseless and perverse and in the charge sheet also, nothing was mentioned about the issuance of such letters and the copies of such letter were also never filed in the enquiry, therefore, the charge under Section 17 (i) (d) of Standing Orders was not proved and the inference drawn by the enquiry officer in this regard was baseless and the findings are perverse. It was further submitted that the enquiry officer in his findings has mentioned that the workman managed to obtain duplicate passbook

fraudulently and as there was no such charge against the workman the findings without any charge amounts to extra unwarranted jurisdiction of the enquiry officer.

It was further submitted by the union representative that the evidence of the witnesses examined by the management is inconsistent and their statements do not corroborate with each other and management has failed to prove the charge against the workman and as such, the findings of the enquiry officer are not based on the evidence on record and are perverse and as such, the punishment of termination of services of the workman is harsh and illegal and the disciplinary authority did not apply his mind independently and simply accepted the findings of the enquiry officer and as such, the punishment imposed against the workman is unjustified and the workman is entitled for reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the management representative that by order dated 23-09-2011, it has already been held by the Tribunal that the enquiry conducted against the workman is valid, justified and in accordance with the principles of natural justice and in the statement of claim, the union has not pleaded that the enquiry report is perverse and according to the judicial pronouncement, the report of the enquiry officer can be held to be perverse, only when, it is found that the enquiry report is not based on evidence recorded in the enquiry or the report is contrary to the evidence on record or the report is as such, which no reasonable person could have arrived at and in this case, if the report of the enquiry officer is examined in the aforesaid rulings, it can be found that the enquiry officer has based his findings on the evidence recorded in the proceedings of the enquiry and the same is not contrary to the evidence and the finding is also not such which could not have been arrived at by any reasonable person and the workman was a habitual absentee and the same was proved in the enquiry and as serious misconduct was proved against the workman, his services were rightly terminated and the punishment is not shockingly disproportionate to the charge and therefore, there is no scope of interfere with the punishment and the workman is not entitled to any relief.

In support of the contents, reliance was placed on the decisions reported in AIR 1972-SC-2182 (M/s. The Benaras Electric Light & Power Co. Ltd. Vs. The Labour Court II, (Lucknow), AIR 1970,SC (M/s. Perry & Co. Ltd. Vs. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta), 2001 LAB IC-2367 (Syed Rahimuddin Vs. Director General, CSIR), 1996 LAB I.C.-462 (B.C. Chaturvedi Vs. Union of India), 2003 LAB IC- 757 (Regional Manager, UPSRTC, Etawah Vs. Hotilal), 2005 LAB IC-4158 (V.Ramana Vs. APSRTC) and 2005 LAB IC-854 (Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakata).

7. Before delving into the merit of the matter, I think it necessary to mention the principles envisaged judgments cited by the management representative.

In the decision reported in 2001 LAB IC-2367 (Supra) the Hon'ble Apex Court have held that:—

“Disciplinary Enquiry:—Finding of fact- Interference- Permissible only when there is no material for the said conclusion: or that on the materials, the conclusion cannot be that of a reasonable man. Enquiry officer dealing with Articles of charge chronologically and relevant materials on basis of which ultimate conclusion is arrived at. Findings of enquiry officer cannot be held to be findings base on no evidence. Bias of enquiry officer also not made out-Enquiry cannot be held to be vitiated.”

In the decision reported in AIR 1972 SC-2182 (Supra), the Hon'ble Apex Court have held that:—

“A finding recorded in a domestic enquiry cannot be characterized as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though, it is possible for some other authority to arrive at a different conclusion on the same evidence.”

8. It is also well settled by the Hon'ble Apex Court in a number of decisions that:—

“A disciplinary proceeding is not a criminal trial. The Standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

** ** ** **

where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the High Court.”

** ** ** **

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the

jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

9. It is also settled beyond doubt by the Hon'ble Apex court in a chain of decisions that:—

“The strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal).”

10. Now, the present case in hand is to be judged with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above.

On perusal of the materials on record, including the pleadings of the parties, it is found that there is no challenge in the statement of claim about the perversity of the findings of the enquiry officer. It is found from the materials on record that the evidence adduced in the enquiry was not challenged by the workman, by taking part in the enquiry. The finding of the enquiry officer is based on the evidence adduced in the enquiry. It is not a case of no evidence or that the conclusions drawn by the enquiry officer are totally against the materials on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

So far the proportionality of punishment is concerned, from the record, it is found that commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of termination of the services of the workman cannot be said to be shocking disproportionate to the serious misconduct proved against the workman. As such, there is no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:—

ORDER

The action of the management of WCL, Chandrapur Area in terminating Shri Surendra Purushottam Ugade, Ex-General Mazdoor w.e.f. 14.07.87 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3435.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 191/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/10/2012 को प्राप्त हुआ था।

[सं. एल-22012/186/1995-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3435.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 191/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 26-10-2012.

[No. L-22012/186/1995-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/191/95

Presiding Officer: Shri MOHD. SHAKIR HASAN

General Secretary,

M.P. K.M.S(HMS),

Post South Jhagrakhand colliery,

Distt. Surguja (MP)

... Workman

Versus

Sub Area Manager,

Rajnagar Area of SECL,

Post Rajnagar Colliery,

Distt. Shahdol (MP)

... Management

AWARD

Passed on this 5th day of October 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-22012/186/95-IR(C-II) dated 30-10-95 has referred the following dispute for adjudication by this tribunal:—

“Whether the demand of the General Secretary, M.P. Koyla Mazdoor Sabha (HMS) for regularization of the sweeping workers named in the schedule on the roll of Rajnagar R.O sub Area of Hasdeo Area of SECL is legal and justified? To what relief the workers are entitled?”

2. The case of the Union in short is that the management is legally duty bound to maintain the sanitary and conservancy service in well order depending on the strength of manpower of the colliery. The requirements of sweeping manpower was increased due to opening of new projects and other establishments. The sweeping is part and parcel of the activity for Coal Industry and incidental too. Sweeping job is a prohibited category *vide* notification dated 1-2-1975 of Ministry of Labour, Govt. of India and are of permanent and perennial in nature.

3. The further case of the Union is that the workmen Shri Raju and 15 others as per list had been engaged by the management for sweeping job/work from 1986 in Rajnagar Re-organisation. Their services were taken to

keep the areas round the colliery clean and colliery drains in good order under the supervision of Medical Officer. They were working alongwith regular employees every where under the strict supervision of the management and their attendance was marked by these personnels and payments were made by them. These workmen had worked the job of permanent and perennial nature which was similar to the regular employees of Category-I and II. The management is custodian of records and is duty bound to maintain the statutory records under the Mines Act. The management therefore could not have engaged these workmen through a ghost contractor. The management adopted unfair labour practices by paying them less wages against the law of the land and branded them as contractor workers. It is submitted that the management be directed to regularize these workmen on Company's roll with all consequential benefits from the date of their engagement.

4. The management appeared and filed Written Statement in the case. The case of the management, *inter alia*, is that it is an admitted fact that sweepers are required for sanitation and conservancy services and the management had sufficient number of sweepers in its roll. It is stated that sweeping manpower of the management was 28 as against the provision of 24 in the year 1986. It is also admitted that a notification was issued by the Central Govt. abolishing the employment of contract labour for the work given in the schedule thereof as has been alleged by the union. It is also admitted that the sweeping is incidental to the activities of Coal Industry and is defined in Central Coal Wage Board 1967 and the Implementation Instruction-69 is applicable.

5. The further case of the management is that the alleged workmen were never employed for the job of Sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishment. The management has permanent workers for the job of cleaning in the colony and mine surface. The management awarded work order for removal of debris and garbage which was accumulated by the regular sweepers. The contractor was required to lift the debris and garbage to dispose off at a specified place. This job does not come under the purview of the said notification. The management has no knowledge as to whom the contractor had engaged for the work order given to him. The management had never engaged contract labours in prohibited category of job *i.e.* sweeping. It is stated that the management had not appointed, taken work nor supervised the work of the alleged workmen and therefore the question of less payment of wages doesnot arise. It is submitted that the demand of the Union is not justified and is not entitled to any relief.

6. On the basis of the pleadings of the parties, the following issues are framed for adjudication:—

- I. Whether the workmen as in the reference list are under the direct control of the management and the contractor is a sham and bogus?
 - II. Whether these workers are doing sweeping work as performed by regular sweepers?
 - III. Whether the demand of the Union for regularizing these sweeping workers on the roll of Rajnagar R.O. Sub Area of Hasdeo Area of SECL is legal and justified?
 - IV. To what relief these workers are entitled?
7. It is apparent from the pleadings of the parties that the following facts are admitted:—
1. The management is legally duty bound to maintain the sanitary and conservancy service in well order depending on the strength of manpower of the colliery.
 2. The sweeping is part and parcel of the activity of Coal Industry and incidental too.
 3. Sweeping job is a prohibited category of work *vide* Notification dated 1-2-1975. The schedule annexed is as under:—

SCHEDULE

- I. Raising or raising-cum-selling of coal.
 - II. Coal loading and unloading.
 - III. Overburden remove and earth-cutting.
 - IV. Soft Coke manufacturing.
 - V. Driving of Stone drifts and miscellaneous stone cutting underground.
 - VI. Sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment.
4. Regular sweeper employees of SECL are engaged for sweeping job and are paid Category-I and II wages.

8. Issue No. I & II

Both the issues are taken up together for the sake of convenience. Now the important point for consideration is that whether these workmen are under the direct control of the management or they are contractor's workers. It is also important to decide that even if these workmen are workers of the contractor, then as to whether they are doing the same work as performed by the regular sweepers. According to the Union/workmen, they were working alongwith regular employees everywhere under the strict supervision of the management and their attendance was marked by these personnels and payments were made by them but the management branded them contractor's workers. On the other hand, the management has contended that the management has permanent workers for the job of cleaning in the colony and mine surface and work order

was awarded to the contractor for removal of debris and garbage which was accumulated by the regular sweepers. The management denied engagement of contract labours in prohibited category of job *i.e.* sweeping.

9. Now let us examine the evidence of the Union/workman in order to determine the point for consideration. Before discussing the evidence, it is proper to see as to what are the works of regular sweepers of the management. The works of prohibited category of sweeping jobs are defined in the Central Coal Wage Board, 1967 and the Implementation Instruction No. 69. The Union/workman has filed photocopy of National Coal Wage Board Agreement III and Implementation Instruction-69 which is admitted by the management and is marked as Exhibit W/13. Serial No. 19 is the job description in sweeping category-I (unskilled) which is as under:—

“A workman generally employed on the surface to keep the surface area including screening and washing plants free from paper, dirt etc. He may be employed under the Medical Officer to keep the areas round the colliery dhowrah and colliery drains in good order.”

In the job description in Category II (semi-skilled) at Sl. No. 5, the work of sweeper is defined as under:—

“In addition to the duties of a sweeping mazdoor, he is also employed in removing night soil.”

10. Now in the light of job description of regular sweeping employee, the evidences are to be examined in the case. The Union has examined 13 witnesses in the case. The Union witness Shri Dhanilal was working as Mate of the regular sweepers. He has come to support the case of these workmen. He knew all the 16 workmen. He has stated that their attendance were marked in the office. He has stated that the contractor was fake and bogus who came on the direction of the management for payment of wages to the worker only. He has stated in cross-examination that he used to take work from these workers. The attendance was taken by Shri Surender Babu, clerk. He has further stated that Sub Area Manager and Medical Officer also took work from them. His evidence clearly shows that there was clear supervision of the work of the management. He has also stated that when regular sweepers were remained absent, those works were taken by these workers. His evidence further shows that they were also doing the works of regular employee which were of prohibited category. There is nothing to show that he has any grudge to depose against the management. Even no such suggestion is given to the witness by the management.

11. Another Union witness is Shri Premlal. He is also mate of sweeping workers and is a regular employee. He has taken the names of these workers. He has stated that they are deputed for work alongwith regular sweepers

where there were necessities by the direction of the management. He has supported the case of the Union in the cross-examination also. He has also stated that where there is necessity of cleaning, he used to depute these workers and they are working since 1985. He has stated that the Engineers and Welfare Officer also direct them to work. He has also stated that he deputed these workers for cleaning drains, septic tank, for cleaning colony and for removing dead animals. His evidence clearly shows that these workers also do the same work as defined in the job description of Implementation Instruction-69 which is a job of permanent and perennial nature for regular sweepers. There is nothing in his evidence to show that as to why he has deposed against the management though he is a regular employee of the management. His evidence fully supports the case of the Union that they were supervised by the management and the contractor is a camouflage and sham and they are doing the same work as by regular sweepers.

12. The Union has examined 11 workers of the list of reference. Their evidence are similar and in corroboration to each other. These workers are : 1. Shri Shekhlal, 2. Shri Ramcharan, 3. Shri Madan, 4. Shri Dhiraj, 5. Shri Vijaylal, 6. Shri Devi Shanker, 7. Shri Dowarika, 8. Shri Babulal, 9. Shri Bhagwan Das, 10. Shri Mahesh and 11. Shri Raju who have supported the case of the Union. They have stated that they are not working since 1985 and are not working under any contractor and denied engagement by contractor. They have admitted that they had not been given any appointment letters nor they gave any interview for appointment. They have supported this fact that they were working alongwith regular sweepers and Mate Shri Premlal deputed them on work. These workmen have also stated that they gave applications of leave to the officers. The workmen Shri Mahesh and Shri Raju have supported the fact that the payment of wages were done in presence of Welfare Officer by the management and were not done by the contractor. The evidence of these workmen clearly show that the management controls and supervises the work of these workmen and the payments of wages are made by the management. The management has not filed even a chit of paper to show that the payments to these workers were done by the contractor though it appears from the evidence of the management witness that there is record of payment in possession of the management. Thus the oral evidence clearly shows that these workmen are in the direct control of the management and they are also working the same work as have been done by the regular sweepers of the management.

13. The Union has also adduced documentary evidence in support of the case. Most of the documents are admitted by the management and others are proved by the Union witnesses which are marked as Exhibit W/1 to W/18. The Union has filed work orders to show that these are created for the purpose to branded these workers as contractors'

workers which are marked as Exhibit W/1 to W/10. The work order 1163 dated 6-4-94 is marked as Exhibit W/2 which is antedated. This clearly shows that the work was to commence on 27-2-94 and to complete on 28-3-94 but the work order was issued antedated on 6-4-94 i.e. after the date of completion of work. This clearly shows that the management created document of work order to colour these workmen as contractor's workers after the alleged completion of work.

14. Exhibit W/5 is another work order 90/123 dated 4-4-90. Similarly this work order shows that the date of commencement of work was on 1-2-90 and the date of completion of work was on 28-2-90. This shows that the work order was issued after the completion of work and is only a paper work. There is no explanation of the management as to how the work order was issued after the completion of the work.

15. Exhibit W/11 is the application dated 11-12-92 filed by the Union before the Asstt. Labour Commissioner (C) Shahdol (MP) whereby the Union raised dispute of Shri Raju and 15 others to treat them to be on the roll of the management. Exhibit W/12 is the reply dated 20-1-1993 of the management before the ALC(C) Shahdol for closing the case of the Union as there is no merit. These documents are filed by the Union to simply show that the Union was raising the dispute that these workers are in the direct control of the management and there is unfair labour practice whereas the management has denied and has contended that they are workers of the contractor and are doing different work than the regular sweepers.

16. Exhibit W/13 is the photocopy of National Coal Wage Agreement-III and I.I.No.69. The relevancy of the document has already been discussed earlier.

17. Exhibit W/14 and W/15 are the copies of sample slips showing engagement of works of these workers. These documents are admitted by the management witness Shri P. Golait. One of the slip is signed by the Labour Officer Shri Patmaik and another slip by the Medical Officer Shri Sahai. These slips show that they were deputed to work to clean night soil and for spraying to prevent mosquito. These works show that it comes under the job description of Sweeper Cat-II of permanent employee (Exhibit W/13). This also shows that the work also comes under the prohibited degree for which there is a notification. These documents clearly show that these workers were under the supervision of the management and are doing the same work as regular employees. Exhibit W /17 series are 18 engagement slips which are signed by the mate Premlal who has admitted his signature in his evidence as a Union witness. He is a regular employee of the management. He took works and used to supervise the regular sweepers of the management and also these alleged workers. These slips clearly show that the alleged contractors workers are deputed to work to clean drains, surface area and to remove

dead animals. These works are admittedly of the regular sweeper of the management and the works are of prohibited degree in view of the notification dated 1-2-1975. Thus these slips clearly show that these workers are termed as contractors workers but were doing the similar work as the regular sweepers were doing and were doing under the strict supervision and control of the management. Exhibit W /18 shows that the alleged contractor worker Vijaylal was deputed to work in place of regular sweeper Foolchand.

18. Exhibit W/16 is the order dated 29-9-03 passed by the Dy. Chief Labour Commissioner (Central), Mumbai on the application under Rule 25(2)(V)(a) and (b) of contract Labour (Regulation and Abolition) Central Rules, 1971 filed by the workman, Shri Raju and 26 others against the management, Hasdeo Area, SECL and Rajnagar colliery and two contractors for same and similar wage rates, holidays, hours of work and other service conditions to the sweeping workers engaged through alleged contractor at Rajnagar Sub Area of Hasdeo Area of SECL at par with sweeping workers employed directly by the principal employer, SECL. The learned Dy. CLC(C) Central Mumbai passed the order dated 29-9-03 and held that—

“As a result of the above findings, it is held that the category of sweepers working at Rajnagar Sub Area of Hasdeo Area of SECL under the contractors are performing the similar work as performed by the corresponding category of sweepers directly employed by the principal employer of SECL”.

This order is filed to show that after considering the oral and documentary evidence, the learned CLC(C) Mumbai has come to the conclusion that these so called contractor workers are also doing the same and similar work of sweeping workers employed directly by the management. This fact clearly shows that these alleged contractor workers are doing the work of prohibited degree as in the notification stated above. The oral and documentary evidence of the Union further shows that the contract is sham and bogus. The evidence shows that they are still working from 1985 and the work orders were created to colour them as contractor's workers.

19. On the other hand, the management has also adduced oral and documentary evidence. The management has examined two witnesses in support of the case. The management witness Shri P. Golait was working as Executive Engineer (C) in Rajnagar R.O. of Hasdeo Area from 1991 to 2001. He has stated that there was sufficient permanent sweeper mazdoor to clean the office building dispensary colony and the inhabitants. This fact is contradicted by another witness. He has further stated that work orders were issued to contractor to remove garbage and debris which is not a permanent job. He has stated at para 7 that he knew that one Premlal was mate who supervised permanent sweepers in cleaning work. Premlal is examined in the case. He has supported that these

alleged contractor workers were also doing the work alongwith permanent sweepers. Premlal has proved his signatures on the engagement slips which are Exhibit W/17 series. This management witness has also proved two engagement slips which are marked as Exhibit W /14 and W/15. He has admitted at para-10 that the work of cleaning sweeping and dusting was under the control of the doctor. The above referred slip (Exhibit W /15) was issued by the doctor for deputing on work to the alleged contractor workers. This shows that the Doctor was controlling these workers as in job description of Implementation Instruction No.69. This also shows that these workers were not only working in removing garbage and debris rather they were also doing the work of permanent sweepers. Another management witness Shri N .R.Das is working as Personnel Manager, SECL, Chirimiri Area. He was working from 1985 to June, 1996. He has stated that after 1986 the temporary sweepers had been decreased and the work of removal of garbage was done by contractor. This shows that he has contradicted Shri P.Golait that there was sufficient number of permanent sweeper. He has stated that the wages of the workers were paid in his supervision and he certified those payment sheets which are in possession of the management. The management has not produced those payment sheets in court to prove that the payment was done by the contractor to these workers which can only to prove the fact. The management is said to have certified the payment sheets. The Union claims that the payment are being done directly by the management. This fact can only be proved by production of payment sheets but the management had concealed the payment sheets as such adverse reference is to be drawn that payment of wages to these workers were being done by the management. He has stated at para-21 that before awarding contract, tender was invited. The management has not filed any tender paper to substantiate the work orders and the contract.

20. The management has also filed documents which are admitted by the Union and are marked as Exhibit M/1 to M/33. The management has filed eighteen work orders to support the fact that the garbage removing work was given to the contractor and to these workers of the contractor. These work orders are marked as Exhibit M/1 to M/4, M/6, M/7, M/9, M/10, M/12, M/17 and M/26 to M/33. Out of these work orders, the work orders marked as Exhibit M/2, M/6, M/7 and M/33 appear to have been issued after the completion of the alleged work. This itself shows that these contractors are only on paper and fake and the works are being done in the direct control of the management by these workers who are continuously working from 1985. Moreover the work orders dont show that these workers were doing the work of garbage removing. This case only be proved from payment sheets and the same was not filed by the management though it were in the possession of the management.

21. Exhibit M/5, M/8, M/11, M/13, M/16 and M/19 are the Inspection reports which is said to have done after completion of the work. It is clear from the above discussion that when the work orders are found to be doubtful and antedated. The Inspection Reports did not place any reliance in the case of the management. It also appears that Exhibit M/8 and M/19 show that the signature on the alleged inspection reports were done after about one month on completion of the works which creates doubt in the genuineness of the document about the claim of alleged inspection.

22. Exhibit M/14, M/15 and M/18 are said to be Labour Payment Certificates issued by Personnel Officer whereby the management certified the payment of wages to the workers. This payment certificates do not disclose the name of the workers. These certificates are based on payment sheets of the workers. The management witness Shri N.R. Das has stated in his evidence that payment sheets are available with the management but those payment sheets are not filed in court which ought to have disclosed the names and number of workers worked in the alleged sweeping work. Moreover both the Exhibit M/14 and M/15 are signed on same day after two months of the completion of alleged works. These certificates do not show that the payment was made to these workers.

23. Exhibit M/21 is the failure report of Asstt. Labour Commissioner(C), Shahdol to Ministry. This is filed to show that no settlement was arrived between the management and Union. Exhibit M/22 is reply of the Dy.CME/ Sub Area Manager Rajnagar R.O. filed before the ALC(C) Shahdol on 20-1-93 wherein the management denied the case of the Union. Exhibit M/23 is the copy of the application dated 11-12-92 filed by the Union before the ALC(C) Shahdol raising the industrial dispute regarding non-regularisation and proper payment of wages to the workers engaged in sweeping job. These documents simply show that the industrial dispute was raised by the Union which ended in failure and thus the present reference.

24. To sum up the entire evidence oral and documentary of both the parties, it is clear that the following facts have been established and proved.

1. The management is legally duty bound to maintain the sanitary and conservancy service in well order depending on the strength of the man power of the colliery.
2. The sweeping is part and parcel of the activity of Coal Industry and incidental too.
3. Sweeping job is a prohibited category of work in view of notification dated 1-2-1975 and are doing by the regular sweepers.
4. The regular sweepers of SECL are engaged for sweeping job and are of category I and II. After

1986, number of sweepers retired and have been decreased in number.

5. The alleged contractor is sham and bogus and contracts are only paper works.
6. These workers listed in the reference case are doing the same job as performed by the regular sweepers of the management.
7. These workers are working under the control and supervision of the management.
8. In view of concealment of payment sheets by the management, it is established that the payment was being made by the management.

Thus it is clear from the discussion made above that these workmen are under the direct control of the management and the contractor is sham and bogus. It is also clear that these workers are also doing the same job as performed by the regular sweepers and the same comes in the prohibited degree. Both the issues are decided in favour of the Union/workmen and against the management.

25. Issue No. III

Now the important question is as to whether these alleged contractor workers are entitled to be regularized on the roll of sweeping workers of Rajnagar R.O. Sub Area of Hasdeo Area or not. On the basis of the discussion made above, it is clear that sweeping, cleaning dusting and watching of buildings owned or occupied by the establishment is a prohibited category of work vide notification dated 1-2-1975. The evidence on the record has clearly established that these so called contractor workers were also doing the same and similar work as performed by the regular sweepers. There is no case of the management that these nature of work done by them which is same and similar to the work of permanent sweepers is as per contract work order. This aspect clearly shows that they were doing the similar work as performed by the regular sweepers under the direct control of the management as it was not the work of alleged contractor.

26. The evidence of the Union witnesses clearly show that these workmen are employed since 1985 and are doing cleaning work continuously. There is even no suggestion to these witnesses that they are not continuously engaged in the work. The evidence of the management witnesses also indicates that they are working continuously in the Rajnagar R.O. The learned representative of the Union has submitted that out of these workers 1. Shri Suresh, 2. Shri Rama Sare, 3. Shri Sandeep, 4. Shri Bhanu and 5. Shri Bhura have left and abandoned the job of the management. He has further stated that Shri Raju died but his wife is working in his place. Out of 16 workers of the list of reference, five left the job and one died and the remaining ten workers are still doing the job of sweeping as has been discussed above. Their continuance in service shows that there is

permanent requirement of sweepers but the management is taking work from them. This fact that the regular sweepers were decreased on account of retirement from 1986, is supported by the management witness Shri N.R. Das at para 25. It is evident that these workers are thus engaged by the management in prohibited degree of work. As such it is clear that to employ these workers against the permanent nature of job prohibited under the notification dated 1-2-1975 by the management and to continue them for more than 25 years with the object of depriving them of the status and privileges of permanent status in spite of requirement of the sweeper workers is nothing but an unfair labour practice as has been provided in 5th schedule of Clause-I (10) of the Industrial Dispute Act, 1947 (in short the Act, 1947).

27. The learned Counsel for the management argued that the Union witnesses have admitted in their evidence that they have not filed any application for the job nor their names were recommended by the Employment Exchange nor any interview was held nor any appointment letter was issued. It is submitted that therefore their services cannot be regularized as their appointments were *dehors* rules and constitutional scheme of Public employment. The learned counsel for the management has placed reliance on a decision reported in AIR 2007 S.C. 1166 Accounts Officer (A&I) APSRTC & ors *Vs.* K.V.Ramana & Ors. Wherein the Hon'ble Apex Court held that—

“In our opinion, these appeals have to be allowed. It has been held by a Constitution Bench of this Court in Secretary, State of Karnataka and others *Vs.* Uma Devi(3) & ors 2006(4) SCC 1 that absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees *dehors* the rules and constitutional scheme of public employment cannot be granted by the Courts. As regards the circular dated 31-3-1998 the same cannot override Article 16 of the Constitution, and hence regularization cannot be granted under the said circular. Even if the contract labourers or casual workers or adhoc employees have worked for a long period they cannot be regularized *dehors* the rules for selection as has been held in Uma Devi's case (*supra*).”

In this particular case, the workers were not in service and were terminated since 10-5-98 but in the instant case, the workmen are still continuing in service. They are engaged in the year 1985 and their engagement as contract sweepers were prohibited on account of notification of the prohibition of the said job *ab-initio*. It is evident that the vacancies of the sweepers were created time to time on retirement of the regular workers and there is unfair labour practices under the provision of the Act, 1947. Thus the facts of this case is different from the decision relied by the management. The learned counsel for the management has also relied decisions reported in 2011-1-LLJ-211(Bom)

Airports Authority of India, Mumbai *Vs.* Indian airport Kamgar Union and others and 2011-1-LLJ-835 (Guj) Leelaben Parmer and ors *Vs.* Physical Research Laboratories & ors. These rulings are not applicable in this case as the fact and circumstances of the instant case is quite different.

28. The learned counsel for the management also argued that these workers were admittedly not engaged by adopting the procedure of appointment. It is further submitted that even if the contractors labour were engaged for the sweeping work which was prohibited by notification dated 1-2-1975, they are not deemed to be automatically absorbed. He has placed reliance of the decision reported in 2001(7) SCC1 SAIL *Vs.* National Union Water Front workers and the award passed in reference case Nos CGIT/LC/R/40/2003 and 21/05 on 16-9-09. It appears that the said decision is based on different facts because it is clear that in the instant case, they were in direct employment and there was already notification on 1-2-1975 prohibiting the engagement of contract sweepers in the sweeping work. The contract work was *ab-initio* void. These workers were doing the same and similar work as were being performed by the regular sweepers. Admittedly there was no work order to the alleged contractor other than the work of removing garbage and debris. The contractors were also found sham, bogus and camouflage. The workers are found in the direct employment for more than last 25 years as they are still doing the work of permanent sweepers under the control of the management.

On the other hand, the Representative of the Union has argued that Uma Devi's case reported in (2006) 4. SCC.1 is explained and distinguished by the Hon'ble Apex Court in the decision reported in (2009) BSCC.556 Maharashtra State Road Transport Corporation and Another *Vs.* Casteribe Rajya Parivahan Karamchari Sangathan. It is submitted that in this case unfair labour practice is established as provided in 5th Schedule Clause I(10) of the Act, 1947 and therefore the workmen are entitled to be regularized on the roll of the management.

30. The learned counsel for the management argued that even if there was any violation of the provision of the Act, 1947 then there is no provision in the Act for automatic regularization rather simply there is penal provision in the Act, 1947.

31. Considering the entire evidence on the record and submission made by the parties, it is evident that ten of the workers are still continuing in the job of sweeping etc. of the management and therefore there is requirement of sweepers to the management of the job of prohibited degree of works. Thus these ten workers are required to be taken on the roll of the management by relaxing the condition as to the maximum age, taking into consideration the age of the workers at the time of alleged initial employment and also relaxing the condition as to academic qualification.

Accordingly this issue is decided in favour of the Union/workmen and against the management.

32. Issue No. IV

On the basis of the discussion made above, it is evident that ten above sweeping workers who are still continuing in the service of the management are required to be taken on the roll of the management if otherwise found suitable on the basis of above conditions. The management is, thus, directed to pass an appropriate order in respect of the ten above stated sweeping workers within two months from the date of award for taking them on the roll of the management on the basis of above direction. The reference is accordingly answered.

33. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3436.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 159/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/55/1995-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 26-10-2012.

[No. L-22012/55/1995-IR(C-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/ 159/2000

Date: 09-10-2012.

Party No.1: The Superintendent of Mines,
Walni Mines, WCL, Sillewara Project,
PO: Walni Mine, Distt. Nagpur

Versus

Party No.2:

The Secretary,
Rashtriya Koyla Khadan Mazdoor
Sangh, Plot No. 604, Giripeth, Opp RTO
Nagpur, Nagpur.

AWARD

(Dated: 09th October, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Shri Pannalal Thakur, to CGIT-cum-Labour Court, Mumbai-I for adjudication, as per letter No.L- 22012/55/95-IR (C-II) dated 21-05-1997, with the following schedule:—

"Whether the action of the management of Walni Coal Mines of M/s. WCL, PO: Walni, Distt. Nagpur in dismissing Shri Pannalal Ramanand Thakur, a regular piece rated worker (UGL raider) from services w.e.f. 30-10-1993 is legal and justified? If not, to what relief the workman is entitled and from which date?"

Subsequently, the case was transferred to this Tribunal, for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Rashtriya Koyla Khadan Mazdoor Sangh", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Pannalal Thakur, ("the workman" in short) and the management of WCL, ("Party No.1" in short) filed its written statement.

The case of the workman as projected by the union in the statement of claim is that the workman was charge sheeted on 11-10-1991, under clauses 17(i)(a) and 17(i) (o) of the Standing orders applicable to Walni Coal Mines and the charges levelled against the workman were vague and not specific and though according to the allegations made in the charge sheet, a complaint was received against the workman that he got the employment as an impersonator and in the preliminary enquiry it was found that his real name is Haridwar Pal S/o. Ramdeo Pal, the charge sheet was not accompanied by the copy of the complaint received against the workman and the copy of the preliminary enquiry report and the charge sheet suffered from infirmities and therefore, the same was bad in law and not maintainable and the workman submitted his reply to the charge sheet, denying the allegations and a police complaint was also made against the workman on the allegation of his impersonating himself as Pannalal Ramanand Thakur and Police submitted charge sheet against the workman in the court of Judicial Magistrate First Class, Saoner, under Sections 419 and 420 of the Indian Penal Code, but the

4214 GI/42-22

workman was acquitted by the court in the criminal case on 31-03-1994 and on receipt of the reply of the workman, the party no.1 constituted the departmental enquiry and appointed Shri A. K. Mehta as the enquiry officer and the workman attended the enquiry alongwith his co-worker and the proceedings recorded by the enquiry officer on the first date of the enquiry dated 18-12-1991 were violative of the principles of natural justice, as the enquiry office did not explain the charges levelled against the workman to him on that day and on the next day of the enquiry, i.e. on 21-12-1991, the enquiry officer directed the management representative to lead evidence from the side of the management, but he did not direct the management representative to supply the copies of the documents and the list of documents and witnesses including the copy of the complaint received against the workman and the enquiry officer, who was an officer of party no. 1 was not fair and he had no intention to conduct the enquiry giving fair and reasonable opportunity to the workman to defend himself effectively and therefore, the procedure adopted by the enquiry officer was against the principles of natural justice and the evidence adduced in the enquiry was vague and did not prove the charge and original documents were not produced and the complaint was not examined in the departmental enquiry as a witness and the departmental enquiry was defective and bad in law and the report submitted by the enquiry officer is liable to be rejected as the same is based on the findings of the defective departmental enquiry and basing on such defective report, as the order of dismissal of the workman from services was passed, the same is also liable to be rejected.

The union has prayed to quash and set aside the order of punishment dated 30-10-1993.

3. The party no. 1 in their written statement have pleaded *inter-alia* that they had done fresh recruitment of unskilled man power of the persons sponsored from local Employment Exchange during February 1990 and posted them in Walni/ Silewara group of mines and one person named Shri Pannalal Ramanand Thakur bearing Serial no. 570 was selected as casual piece rated employee and posted accordingly, *vide* appointment order no. 1520 dated 24-02-1990, for a specific period of three months i.e. from 30-03-1990 to 02-06-1990 and according to clause 2 of the said appointment order, the said appointment was to automatically terminate on completion of the tenure of appointment, unless otherwise extended in writing and on 02-01-1991, a complaint was received from one Pannalal Ramanand Thakur, a resident of village-Sagarpali, Thana-Farena, District-Balia (UP) under cover of letter dated 14/15-05-1991 in which, it was alleged that one Shri Haridwar S/o, Ramdeo Pal had mischievously entered in the services of WCL, Walni Mine, Nagpur Area in his name and the said Haridwar is an impersonator and as such, proper enquiry should be done to punish him and alongwith the complaint, the complainant had given certified copy of photographs

and Employment Exchange card no. 20614/83 issued by Employment Exchange, Nagpur and for the purpose of making the enquiry into the alleged impersonation and to submit a report to the Ministry, Shri T.V. Deshmukh, the then Area Security Officer was deputed for investigation/ preliminary enquiry and after conducting a thorough preliminary enquiry and obtaining the statement of the complainant and the workman, Shri Deshmukh submitted his report with the finding that the workman is a impersonator and his real name is Haridwar S/o. Ramdeo Pal and as such, a charge sheet was submitted against the workman, under clauses 17(i) (a) and (o) of the Standing Orders on 11- 10- 1991 and the workman submitted his explanation denying the charges levelled against him and as the workman denied the charges, a departmental enquiry was constituted against him and the charge sheet was not vague, but it was very clear stating that he had impersonated shri Pannalal Ramanand Thakur in respect of name, Father's name, age, address etc and neither the workman nor his co-worker raised any objection about the alleged vagueness of the charge sheet and such an objection has been raised for the first time before the Tribunal as an afterthought and a complaint was also registered with the local Police station, Khaperkheda against the workman and mere acquittal from the court is not the proof of innocence of the workman and the acquittal of the workman in the criminal case was after his dismissal from the services. The further case of the party no. 1 is that the procedure adopted by the enquiry officer in the enquiry was quite natural and he sufficiently briefed the workman and his co-worker about the procedure to be followed during the enquiry proceedings and the enquiry was conducted by following the principles of natural justice. The further case of the party no. 1 is that one Pannalal Ramanand Thakur, a resident of Village Adarsh Nagar, PO-Sagarpalli, Distt. Balia (UP) had registered his name in the Employment Exchange at Nagpur as a local candidate in the year 1982-83 having Employment Exchange no. 2944/83 and he was staying with his elder brother, who was running a barber shop at Wani Mine and later on, in the year 1984, both the brothers went back to their native place in UP, leaving the Employment Exchange card with one Shri Ramashankar Pal, with a request to intimate them, whenever a call letter would be received and on 28-11-1989, WCL Nagpur Area submitted its manpower requisition to the Employment Exchange and accordingly, a list of 1016 candidates including the name of Pannalal Ramanand Thakur at serial no. 263 was sponsored by the Employment Exchange on 20-01-1990 and call letter no. 510 was posted in the name of said Pannalal, which was received by Ram Shankar Pal, but he instead of intimating about the same to Pannalal, intimated about the call letter to Haridwar Ramdeo Pal (the workman), the impersonator and on the basis of said call letter, the workman appeared for the interview representing himself to be Pannalal Ramanand Thakur and obtained the job and the real Pannalal Thakur when came

to learn about the mischief, he sent his brother, Motilal S/o. Ramanand Thakur to Nagpur, but the workman threatened Motilal, for which, he went back to UP, without making any head way and thereafter, the real Pannalal Thakur lodged a complaint with the General Manager, WCL, Nagpur Area and on getting the complaint, the complainant was directed to come to Walni and to produce his written statement, if any and a preliminary enquiry was held in which, the real Pannalal gave his statement and also produced one certificate issued by one Rajnarayan Upadhayay, the Gram Pradhan, Sawna, in which, it was mentioned that there is no person by name Pannalal Ramanand Thakur at Village Baluwa, Tehsil-Mohammadabad Distt. Gazipur (UP), which was the original address of the workman as per service record and Pannalal also produced the extract of family register of Gram Sabha of village Baluwa giving the details of Late Somaru, grandfather of the workman, duly stamped and certified by Gram Panchayat officer and Vidhan Sabha voter list for the year 1989 of village Baluwa and Pannalal also produced a backward class certificate issued by Tahasildar, Mohammadabad, Distt. Gazipur, which showed that the workman hails from village Baluwa. The further case of the party no. 1 is that Pannalal also produced the extract of family register in respect of his own family, which was duly certified alongwith the certified photograph fixed therein of Pannalal Ramanand Thakur, the residential certificate issued by Gram Pradhan of village Adarshnager, Sagarpalli stating that the complainant, Pannalal of belonging to village Adarshnager and during investigation, it was learnt that in connection with the communal riots which had taken place at Walni in 1984, the workman was arrested by the police alongwith others and a criminal case was registered against him, which is pending in Saoner Court.

It is also pleaded by the party no.1 that during the preliminary enquiry, the workman made clear confession stating his name to be Haridwar Ramdeo Pal and of his passing XIIth class examination in the year 1981 from Allahabad (UP), but during the departmental enquiry, the workman took somersault and denied his own statement by giving evasive replies, but he did not produce any evidence in rebuttal and as the charges were duly proved, his dismissal is totally justified.

4. As this is a case of dismissal of the workman from services after holding of a departmental enquiry against him, the fairness of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 17-03-1999, the enquiry conducted against the workman was held to be not fair and proper. As the party no. 1 had sought for an opportunity to give them a chance to prove the charges against the workman in case of an adverse finding regarding the fairness of the enquiry, the party no. 1 was given the opportunity to prove the charges against the workman before the Tribunal.

5. To prove the charges against the workman, party no. 1 besides placing reliance on documents, examined as many as five witnesses, namely, (i) Shankar Raju Maderwar, (ii) Tanaji Vithobaji Deshmukh, (iii) Pannalal Ramanand Thakur, (iv) Rambachan Fekurand and (v) Munowar Ali.

In rebuttal, the workman besides examining himself as a witness has examined Sadanand Shriram Dhiraj and Rajnarayan Upadhayay as his witnesses.

6. Before delving into the merit of the matter, I think it necessary to mention the charges levelled against the workman under the standing orders which are as follows:—

Charge no.1:— Clause 17 (i) (a)—Theft, fraud or dishonesty in connection with the employer's business or property .

Charge no.2:— Clause 17 (i) (o)—Giving false information regarding one's name, age, father's name, qualification or previous service at the time of employment.

7. At the time of argument, it was submitted by the union representative that by order dated 17-03-1999, it has already been held by the Tribunal that the enquiry conducted against the workman not to be fair and proper and the Tribunal also directed the party No.1 to prove the charge against the workman before it and management have examined as many as five witnesses to prove the charge against the workman, whereas, in rebuttal, the workman has examined three witnesses including himself and besides the initiation of the departmental enquiry, a F.I.R. had been lodged against the workman in Khaparkheda Police Station on the same allegation of his obtaining the employment in WCL by impersonating the complainant, Pannalal Ramanand Thakur and a charge sheet was filed against the workman in the Court of Judicial Magistrate First Class, Saoner in the year 1992, but the workman was honourably acquitted by the Court in the year, 1994, after a full trial and though the complainant had given his statement in the preliminary enquiry, he did not appear as a witness before the Criminal Court or in the enquiry conducted against the workman and the evidence of Shri Rambachan Fekuram was rejected by the J.M.F.C., as because, the same as not reliable and bonafide and on close analysis of the evidence of the witnesses examined by the Party No.1 before this Tribunal, it can be found that their evidence is not all trustworthy and the same is inconsistent and not reliable and Party No.1 has failed to establish the charges against the workman. It was further submitted by the union representative that the evidence of the witnesses examined in rebuttal by the workman has not at all been shaken in the cross-examination and Party No.1 has not been able to bring out anything in their cross-examination, to disbelieve them and the rebuttal evidence adduced by the workman clearly establishes that there was never any impersonation

by the workman to get the employment. It was further submitted by the union representative that as the workman was acquitted in the criminal case, he should have been reinstated in service, as the charges both in the criminal case and departmental enquiry were the same and the findings of the Criminal Court is to prevail upon the departmental enquiry and as the documents of the departmental enquiry were not proved before this Tribunal, the same cannot be taken into consideration and in view of the failure of the Party No.1 to establish the charges against the workman, the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of the contentions, the union representative placed reliance on the decisions reported in 2010 LAB IC - 3791 (Calcutta High Court) (State of West Bengal Vs Shankar Ghosh), 2006 LAB IC -4111 (Andhra Pradesh High Court) (J. Ravi Kumar Vs The Chief General Manager) and 1994 1 LLJ - 162 (M.D., ECIL, Hyderabad Vs B. Karunakar).

At this juncture, I think it necessary to mention here that judgment reported in 1994 1 LLJ -162 (supra) relates to the effect of non-supply of enquiry report to the workman and as in this case, it has already been held that due to non supply of the copy of the enquiry report to the workman, the enquiry was not fair and proper, there is no need for consideration of the principles enunciated by the Hon'ble Apex Court in the said decision again.

8. Per contra, it was submitted by the management's representative that management has proved beyond doubt that the employment sought by the workman was based on fraud and impersonation and Employment Exchange had sponsored the name of Shri Pannalal Ramanand Thakur with others for recruitment of unskilled man power for Walni/ Sillewara group of mines and the workman impersonated himself as Pannalal Ramanand Thakur and obtained the employment by fraud and it is clear from the evidence adduced on record that the workman is not Pannalal Ramanand Thakur and the evidence of the five witnesses examined by Party No.1 has not at all been shaken or discredited in the cross-examination, whereas, the evidence of the workman and his two witnesses is not at all trustworthy and not a single legal document has been produced by the workman in support of his claim and it is clear from the evidence that the workman is Haridwar Pal and the acquittal of the workman in the criminal case is not a clear cut or honourable acquittal and he was acquitted by the Court by giving him the benefit of doubt and as the commission of serious misconduct has been proved against the workman, the punishment imposed against him is justified and the workman is not entitled to any relief.

9. So far the contention raised by the union

representative regarding the effect of the acquittal of the workman in the criminal case is concerned, it is not disputed that criminal case no. 77/92 was registered against the workman under Sections 419. and 420 of the Indian Penal Code and the workman was acquitted by the learned Judicial Magistrate First Class, Saoner by judgment dated 31-03-1994. However, on perusal of the copy of the judgment passed in criminal case no. 77/92, it is found that the workman was acquitted by the Court giving him the benefit of doubt.

The union representative has cited the decisions of the Hon'ble Calcutta High Court reported in 2010 LAB IC - 3791 (supra) and 2006 LAB IC 4111 (supra) in support of his submission. In the judgment reported in 2010 LAB IC - 3791 (supra), the Hon'ble Court have held that:

"Constitution of India, Art. 311 -Dismissal from Service--Both criminal and departmental proceeding initiated against respondent Sepoy in armed Police were based on identical set of facts and on the identical charge regarding involvement of the respondent in connection with a dacoity case-- Acquittal of respondent in criminal case by Sessions Judge--Findings of Sessions Judge in criminal case--Must prevail upon Disciplinary Authority-- Respondent is entitled to reinstate."

However, with respect, I am of the view that the aforesaid judgment has no application to the present case in hand, as because, in this case after perusal of the materials on record, it is found that the punishment of dismissal was passed prior to the disposal of the criminal case, the acquittal of the workman in the criminal case was not an honourable acquittal, but under benefit of doubt and the departmental enquiry and the criminal case instituted against the workman were not based on the same set of facts and evidence.

The judgment, reported in 2006 LAB IC -1411 (supra), is regarding submission of departmental charge sheet basing on remand report of Police, which is not the case in the present case in hand and as such, with respect, I am of the view that the said decision has no application to this case.

Now, from the evidence adduced by the parties and the materials on record, it is to be considered as to whether, Party No.1 has been able to establish the charges against the workman.

10. So far the oral evidence is concerned, Pannalal S/o. Ramanand Thakur, R/o. Sagarpalii, District-Baliya, the person, who had lodged the complaint against the workman of impersonating him and to get the employment has stated that he had registered his name in the Employment

Exchange, Nagpur on 17-02-1983 and as he did not get any employment for more than a year, he decided to go back to his native village and before leaving Nagpur, he gave the employment exchange card to one Ramshankar Pal with a request to intimate him in case of receipt of any call for interview and in March or April, 1991, he came to know from one Shri Rambachan that one Haridwar Pal S/o. Ramdeo Pal has obtained employment in WCL by his (in the name of The witness) name, by using his employment exchange card and after getting such information, he lodged a complaint to the General Manager, Coal Mines, Walni Khadan and after filing the complaint, he got a call from the said colliery Manager and came to Walni and met Shri Pathak, the Personnel Officer and being directed by Shri Pathak, Shri Shankar Raja, a clerk took him to Shri Deshmukh Saheb, the Area Security Officer and he showed all the original documents in support of his claim and before his going to the WCL office, he was threatened by the workman (Shri Haridwar Pal) and three to four others of dire consequences in case of his taking part in the enquiry and he told about the same to Shri Deshmukh and Shri Deshmukh recorded his statement and he gave the zerox copies of all the documents to Shri Deshmukh and Shri Deshmukh assured him about his safety and asked him to come at the time of the enquiry to give statement and he promised Mr. Deshmukh that he would come with original documents, but after his return from Mr. Deshmukh, he was again threatened to be killed by the workman and his friends in case of coming to Walni again, so out of fear, he left Walni immediately and went to his native village and even though, he had received a call from WCL to give evidence in the enquiry, out of fear of being killed, he did not come to Walni.

Though this witness has been cross-examined at great length, nothing of substance has been brought out in his cross-examination to disbelieve him. Rather, in his cross-examination, it has been brought out that he has submitted the certificate issued by the Grampanchayat, report of the Lekhpal dated 07-05-1999, certificate certified by the Notary and certificate issued by the Tehasildar dated 07-05-1999 in support of his identification and he had registered his name in the Employment Exchange on 07-02-1983 and he had put his LTI on the employment card and he has also produced and proved the application submitted to the Supdt. of Mines dated 06/08-07-1999 as Ex-M-3. The assertion of this witness regarding submission of the complaint against the workman and that the workman got the employment by falsely impersonating himself as Pannalal Ramanand Thakur and that he had given his statement before Shri Deshmukh and submission of documents in regard to his identity has not been seriously challenged.

11. Party No. 1 has examined Rambachan Fekuram, an employee of Pipla Colliery as MW-4. This witness in his examination-in-chief, which is on affidavit, has stated that he personally knows Pannalal Ramanand Thakur and he himself and Pannalal belong to the same area and that Pannalal had come to Walni in the year 1982, where brother of Pannalal was running a barber shop and Pannalal had obtained an Employment Exchange card from Employment Exchange, Nagpur and in or about 1984, Pannalal left Walni and went to his native place and in the year 1991, he went to his native place and met Pannalal and after seeing Pannalal, he recollected that one person, namely Haridwar Pal was working in WCL in the name of Pannalal, so he told about the said fact to Pannalal and Pannalal made a complaint about the same and he was examined by the police against Haridwar Pal for obtaining the job in the name of Pannalal Ramanand Thakur. The evidence of this witness has not been shaken in the cross-examination. Even no suggestion was given to this witness that the workman did not obtain the job in the name of Pannalal Ramanand Thakur. Evidence of Pannalal Ramanand Thakur has been fully corroborated by the evidence of this witness.

12. MW-2, is Shri Tanaji Vithobaji Deshmukh, the Security Officer, who had conducted the preliminary enquiry basing on the complaint filed by Pannalal Ramanand Thakur against the workman. In his evidence, MW-2 has stated that as per the order dated 03/05-06-1991, he carried out the preliminary enquiry and during the enquiry, he recorded the statement of Pannalal Ramanand Thakur and the workman and in his statement, the workman had confessed that his real name is Haridwar Pal and that he was working in WCL in the name of Shri Pannalal Thakur and he obtained the signature of the workman on his statement. The assertion of this witness that during the preliminary enquiry, he recorded the statement of the workman and the workman made a confession that he is Haridwar Pal, son of Ramdeo Pal and he obtained the service in the name of Pannalal Ramanand Thakur has not been challenged in the cross-examination.

13. Shri Shankar Raja Madewar has been examined as MW- 1. The said witness has stated that he was working as a clerk in personnel office at Walni Mines in 1989 and he knows Shri Pannalal Thakur personally, as Pannalal's brother, Moti Thakur was running his hair cutting saloon at Walni Mines and he used to go to the said saloon for hair cutting and often used to meet Shri Pannalal Thakur and on 20-04-1991, the complaint of Shri Pannalal Thakur was received in the office of the Manager, in which, it was alleged that one Haridwar Pal of Gajipur district (U.P) had got appointment in WCL in his name and after receipt of the complaint, Pannalal Thakur himself had come to the office and met the Personnel Officer, Shri Pathak and being

directed by Shri Pathak, he took Pannalal Thakur to Shri T.V. Deshmukh, the Security Officer and Shri Deshmukh recorded the statement of Shri Pannalal in his presence and Pannalal produced documents in support of his claim that Shri Haridwar Pal was working in WCL in his name. Such assertion of Shri Shankar has virtually remained unchallenged in cross-examination.

14. MW-5, Shri Munowar Alli, who was the Tehsildar of Balia, has stated about the issuance of a caste certificate on 07-05-1999 by the then Tehsildar on the application of Shri Pannalal son of Ramanand Thakur, R/o Sagar Palli, Tehsil- Sadar, Balia, UP.

15. In rebuttal, the workman has examined three witnesses including himself. Shri Sadanand has been examined as WW- 1, who in his examination-in-chief has stated that he is a member of Mohambadabad Panchayat and Pannalal, son of Ramanand, who was working in Walni Mines belongs to his village, Balua and he knows the entire family members of Pannalal personally. However, in his cross-examination, demolishing his own evidence, this witness has stated that he cannot say the name of the family members of Pannalal Thakur and he also cannot say the house number of Pannalal Thakur.

WW-2, Rajnarayan, son of Jagannath Upadhyaya, resident of Sawana has stated that he was the Sarpanch from 01-06-1998 to 1992 (which appears to be quite wrong) and he knows Pannalal, son of Ramanand Thakur, who was working in Walni Coal Mines and the allegations against Shri Pannalal are not correct. In his cross-examination, this witness has stated that he does not know as to whether the name of Shri Pannalal Thakur is written in any list of the villagers in the census and he does not know the house number of Pannalal and he has not filed any document to show that Pannalal is residing at Sawana.

From the cross-examination of WW-1 and WW-2, it is found that their evidence is not trustworthy and no reliance can be placed on the same.

16. The workman has examined himself as WW -3. In his evidence, he has stated that in the year 1983, he came to Nagpur and stayed with his relative, Ramashankar and he registered his name in the Employment Exchange and in 1990, he received a call letter for the post of loader and appeared in the interview and was selected for the post and posted as a loader in Walni Mine. He has further stated that he is Pannalal, son of Ramanand Thakur of village Balua. In his cross-examination, the workman has admitted that he has participated in the departmental enquiry and he does not remember the date of birth mentioned in the office of the Employment Exchange and in the enquiry, he had told that he was illiterate and he cannot say what address was given by him in the office of the Employment Exchange

and after two to three years of settling in Nagpur, he applied in Employment Exchange and he has not filed any certificate showing his residence to be at Balua.

The service record of the workman has been marked as Exhibit M -III. From the service record, it is found that the date of birth of the workman has been mentioned as 03-04-1965, where as the Employment Exchange card shows that the name of Pannalal Thakur, whose date of birth is 23-03-1964 was registered on 17-02-1983. If the date of birth of workman as mentioned in the Service Book is taken into consideration, then admittedly he was a minor on 17-02-1983 being below 18 years of age. So, there is no question of registration of his name by the workman on 17-02-1983. It is clear from the above fact and from the cross examination of the workman that the workman had never registered his name in the Employment Exchange.

It is clear from the evidence adduced by the Party No.1 and the documents produced in the departmental enquiry including the statement of the workman recorded by MW-II, Shri T.V. Deshmukh that Party No.1 has been able to establish the charge under clause 17 (i) (O) of the Standing Orders against the workman, by proving that the workman by giving false information regarding his name and father's name entered into the service and he got the employment by falsely representing himself as Pannalal Ramanand Thakur, though infact he is Haridwar Pal son of Ramdeo Pal.

17. The misconduct proved against the workman is very grave and serious in nature. So the dismissal of the workman from services is the appropriate punishment for commission of such grave and serious misconduct. Hence, the punishment of dismissal of the workman from services imposed against the workman is upheld. Hence, it is ordered:—

ORDER

The action of the management of Walni Coal Mines of M/s. WCL, PO: Walni, Distt. Nagpur in dismissing Shri Pannalal Ramanand Thakur, a regular piece rated worker (UGL raider) from services *w.e.f.* 30-10-1993 is legal & justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 125/93 को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/10/2012 को प्राप्त हुआ था।

[सं. एल-22012/92/1993-आई आर (सी-11)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3437.—In pursuance of Section 17 of the Industrial Dispute Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 125/93 of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 26-10-2012.

[No. L-22012/92/1993-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/125/93

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

The General Secretary,

M.P.K.K. M.P. (HMS),

PO Junnardeo,

Distt. Chhindwara (MP)

Workman/Union

Versus

The Manager,

Nandan Mine No. 1 of WCL,

Kanhan Area,

PO Nandan,

Distt. Chhindwara

Management

AWARD

Passed on this 10th day of October 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-22012/92/93-IR(C-II) dated 21-6-93 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the Manager, Nandan Mine No. 1 of WCL Kanhan Area, PO Nandan, Distt. Chhindwara (MP) in dismissing the services of Shri Chhotelal S/o Beni, Casual Mazdoor T.No. 0396 of Nandan Mine No. 1 *w.e.f* 26-6-91 is justified? If not, to what relief the concerned workman is entitled to?”

2. The case of the Union/workman in short is that the workman Chhotelal was appointed as General Mazdoor on 1-1-76 and was transferred to Hirdagarh Siding to Nandan

Mine on 1-2-1984. He was sick from 30-5-90 to 16-6-90. Subsequently he met with a jeep accident on 26-7-90 while going on duty. It is stated that the management took his LTI on several papers. He was never chargesheeted nor any enquiry was conducted. He was dismissed from service on 25-6-91. The workman had not been given opportunity to defend himself. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement. The case of the management, *inter alia*, is that admittedly the workman was appointed as General Mazdoor but he was habitual absentee without any justification inspite of repeated warning. He was charge-sheeted on 16-6-90. He gave his explanation which was not satisfactory. A departmental proceeding was initiated and Shri P.S. Deshpandey was appointed as Enquiry Officer. The workman admitted the charges in enquiry proceeding. However the Enquiry Officer proceeded with the enquiry. The workman participated in the enquiry. The Enquiry Officer submitted his report holding him guilty of the charges. The Disciplinary Authority considering the entire proceeding passed the order of dismissal. It is submitted that the workman is not entitled to any relief.

4. On the basis of pleadings of the parties, the following issues are framed for adjudication:—

- I. Whether the enquiry is just, proper and legal?
- II. Whether the management is entitled to lead evidence before the Tribunal?
- III. Whether the charges of misconduct are proved on the facts of the case?
- IV. Whether the punishment awarded is proper and legal?
- V. Relief and costs.

5. The workman/Union subsequently became absent and therefore then Tribunal proceeded the reference *ex parte* on 5-3-2008 against the Union/workman.

6. Issue No. I

This issue is taken up as preliminary issue. After considering the documents of the enquiry proceeding, it is held that the departmental enquiry conducted by the management against the workman is legal and valid *vide* order dated 28-4-2011. Thus this issue is already earlier decided.

7. Issues No. II & III

The management has filed all the documents of the enquiry proceedings which are marked as Exhibit M/1 to M/11. The documents show that the workman appeared in the proceeding and admitted the charges. The management

4214 GI/12-24

had filed attendance particulars in the proceeding. This shows that the workman was present in the year 1989 for 42 days, in the year 1990 for 33 days and in the year 1991 for 11 days. The evidence shows that he was absent from May 1991. The finding of the Enquiry Officer appears to be not perverse. There is no need to the management to prove misconduct against the workman which appears to have been established against him. Both the issues are decided against the workman and in favour of the management.

8. Issue No. IV

Considering the evidence on the record, it is clear that the workman was habitual absentee and his attendance was very poor. There is no reason to interfere in the punishment order awarded to the workman by the management. This issue is decided against the workman and in favour of the management.

9. Issue No. V

It is clear that there is no merit in the case of the Union and therefore the workman is not entitled to any relief. The reference is accordingly answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 26 अक्टूबर, 2012

का.आ. 3438.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस ई सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 268/99 को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-10-2012 को प्राप्त हुआ था।

[सं. एल-22012/56/1999-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 26th October, 2012

S.O. 3438.—In pursuance of Section 17 of the Industrial Dispute Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 268/99 of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 26/10/2012.

[No.L-22012/56/1999-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/268/99

PRESIDING OFFICER: SHRI MOHD.SHAKIR HASAN

The Secretary,
Koyla Khadan Shramik Sangh,
Kotma Colliery,
Distt. Shahdol (MP) ... Workman/Union

Versus

The General Manager,
Jamuna and Kotma Area of SECL,
PO Jamuna Colliery,
Distt. Shahdol (MP) ... Management

AWARD

Passed on this 4th day of October 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/56/99/IR(CM-II) dated 30-7-1999 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Chief General Manager, Jamuna and Kotma Area of SECL, PO Jamuna Colliery, Distt. Shahdol (MP) in not granting one advance increment under self development scheme when he completed the graduation degree with the management permission to Shri Ram Niwas Kewat, Data Entry Operator in computer section is legal and justified? If not, to what relief is the workman entitled?”

2. The case of the Union/workman in short is that the workmen Shri Ram Niwas Kewat was initially appointed as a General Mazdoor in the year 1986. He was selected as Data Entry Operator in the year 1992. After taking permission from the management Jamuna Kotma Area, he passed graduation from G.G. University in the year 1995 and post graduation in 1997. It is stated that Shri P.K. Pandey of Baikunthpur and Shri Sumir Roy of Korba are Data Entry Operators and they were similarly granted one advance increment in the existing grade vide orders dated 27-6-1992 and 16-7-1994 respectively. It is stated that on passing graduation similarly Shri Sunderlal of Korba and Shri Abhyas Muni Sahoo of Sohagpur were granted one advance increment vide order dated 30-12-96 and 22-9-1997 respectively. It is stated that the workman after passing graduation filed an application before the management on 21-8-1995 for grant of one special increment but he was denied the same without any justification. It is submitted that the management be directed to grant one advance increment from the date of

passing graduation as has been provided to other similarly situated workers.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the cadre scheme for Electrical Data Processing personnel is known as Cadre Scheme 10. It is stated that the Coal India Ltd. Calcutta has issued a circular No. 745 dated 12-7-88 whereby an advance increment to non-executive on obtaining professional qualification be granted. The said advance increment to non-executive on obtaining professional qualification was stopped vide circular No. 139 dated 16-1-2002. It is stated that degree/diploma relevant to the area of the work, obtained by the workers, will entitle them for grant of advance increment. The workman had obtained post graduate degree in sociology which did not enhance his efficiency or performance in Data Processing. As such he was not granted any advance increment. It is submitted that the claim of the workman is not justified.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication :—

I. Whether the action of the management in not granting one advance increment under self development scheme on obtaining graduation degree to Shri Niwas Kewat Data Entry Operator is legal and justified ?

II. To what relief, if any, is the workman entitled to ?

5. Issue No. I

The workman has adduced only documentary evidence in the case. The workman has filed two office orders dated 19/22-8-94 and 29/30-8-96 which are marked as Exhibit W/4 and W/4(a) respectively on admission. This is filed to show that the workman had taken permission for appearing in B.A (Final) Examination of 1994-95 and M.A (Final) Examination of 1996-97. Exhibit W/5 is the application dated 21-8-1995 of the workman whereby on passing B.A final examination, he claimed for grant of one special increment. This is also admitted by the management. There is no denial that the workman has not passed the B.A and M.A examination. Thus it is clear that the workman passed the graduation and post graduation examination during his service period after taking due permission from the management. It is also clear that the workman demanded an increment on obtaining higher qualification.

6. The workman has further filed number of office orders which are marked as Exhibit W/4(b) to W/4(i) which are also admitted by the management. These office orders are filed to show that similarly situated other

workers, who were Data Entry Operator, were granted one advance increment on passing graduation and post graduation examination. These facts are not denied in the pleading by the management, rather the management witness Shri Jawaid Jabbar has admitted in his evidence. Exhibit W/4(b) is the office order dated 22/27-6-92 whereby the management had granted one advance increment to Shri P. K. Pandey, Data Entry Operator of Baikunthpur on obtaining BA degree under self development scheme. This clearly shows that the workman Shri Ram Niwas Kewat had similarly passed the graduation in B.A and rightly claimed the increment under Self Development Scheme. Exhibit W/4(h) is another office order dated 30-12-96 whereby Shri Sunderlal Data Entry Operator of Korba was granted one additional increment on sanction by the Competent Authority on obtaining B.A degree. This is also filed to show that the management had intentionally discriminating him from other co-workers of the same cadre scheme. Exhibit W/4(e) is also an office order dated 20-12-9-1997 whereby Shri Abhyas Munir Sahoo and five others, Data Entry Operator were granted one additional increment under the same self development scheme on obtaining M.A in sociology under the said scheme. The workman had also obtained B.A degree as well as M.A in sociology but he was discriminated by the management. These all office orders show that the workman is also similarly situated with other cases and the workman is also entitled to grant one additional increment w.e.f. the date of passing B.A degree.

7. On the other hand, the management has also adduced oral and documentary evidence in the case. The management witness Shri Jawaid Jabbar is Personnel Manager at Jamuna and Kotma area. He has supported the case of the management in examination-in-chief. He has supported the fact that the Coal India Ltd., Calcutta has issued a circular No. 745 dated 12-7-88 with regard to grant of advance increment to non-executive on obtaining professional qualification but in cross-examination, he has admitted that Shri Pandey who obtained BA degree was also granted additional increment. He has further supported that Shri Sunderlal, Data Entry Operator was also granted one increment on obtaining BA degree. Thus it is clear that the similarly situated other workers were granted one increment. He has further stated that the SECL vide circular 139 dated 16-1-2002 has stopped granting advance increment to non-executive. This circular is not applicable to this workman as his claim is prior to the said circular.

8. The management has filed the circular No. 745 dated 12-7-1988 which is marked as Exhibit M/3. It is admitted by the Union which runs as follows :—

"The above referred matter was discussed in the 34th meeting of Directors (P) held on 9th May 1988 at CIL (Hqs) Calcutta wherein it was agreed that the self development of the employees must be encouraged and there should not be any restriction in the grant of advance increment on obtaining recognized degree/diploma which will be relevant to their area of work. Obtaining Ph.D Degree must also be considered as a special case."

This shows that the worker who obtained degree/diploma which will be relevant to their area of work will be granted one advance increment. The above cited cases shows that the other workmen were granted on advance increment on sanction and on obtaining B.A degree or M.A in sociology by the Competent Authority. This itself shows that the B.A degree was considered by the competent authority as relevant to their area of work. This aspect clearly shows that the workman Shri Ram Niwas Kewat is entitled to be granted one advance increment on completion of graduation degree. This issue is decided in favour of the workman and against the management.

9. Issue No. II

On the basis of the discussion made above, it is clear that the action of the management is not legal and justified and is discriminatory. Therefore the management is directed to pass order granting the workman one advance increment from the date of his passing the graduation degree with payment of all difference of back wages within two months from the date of award failing which he is entitled 12% interest of difference of wages. The reference is accordingly answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 5 नवम्बर, 2012

क्र.आ. 3439.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार एतद्वारा 01 दिसम्बर, 2012 को उस तारीख के रूप में निर्दिष्ट करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा-76 की उप-धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध सिक्किम राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे:—

क्र.सं.	राजस्व क्षेत्र के नाम	अनुमंडल	जिला
1.	गंगटोक नगर निगम के अंतर्गत आने वाले क्षेत्र	गंगटोक	पूर्वी सिक्किम
2.	रंगपो नगर पंचायत के अंतर्गत आने वाले क्षेत्र	गंगटोक	पूर्वी सिक्किम
3.	सिंगतम नगर पंचायत के अंतर्गत आने वाले क्षेत्र	गंगटोक	पूर्वी सिक्किम
4.	सेंट्रल पेंडम ग्राम पंचायत के अंतर्गत आने वाले क्षेत्र	गंगटोक	पूर्वी सिक्किम
5.	मामरिंग ग्राम पंचायत के अंतर्गत आने वाले क्षेत्र	नामची	दक्षिण सिक्किम
6.	सिरवानी चलमथंग नगर पंचायत के अंतर्गत आने वाले क्षेत्र	गंगटोक	पूर्वी सिक्किम

[सं. एस-38013/35/2012-एस एस-1]

नरेश जायसवाल, अवर सचिव

New Delhi, the 5th November, 2012

S.O. 3439.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st December, 2012, as the date on which the provisions of Chapter IV (Except Sections 44 and 45 which have already been brought into force) and Chapters-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Sikkim namely:—

Sl. No.	Name of Revenue Areas	Sub-Division	District
1.	Areas falling within limits of Gangtok Municipal Corporation	Gangtok	East Sikkim
2.	Areas falling within limits of Rangpo Nagar Panchayat	Gangtok	East Sikkim
3.	Areas falling within limits of Singtam Nagar Panchayat	Gangtok	East Sikkim
4.	Areas falling within limits of Central Pendam Gram Panchayat	Gangtok	East Sikkim
5.	Areas falling within limits of Mamring Gram Panchayat	Namchi	South Sikkim
6.	Areas falling within limits of Sirwani Chalamthang Nagar Panchayat	Gangtok	East Sikkim

[No. S-38013/35/2012-S.S.1]

NARESH JAISWAL, Under Secy.